



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100570752-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

### Type of Application

What is this application for? Please select one of the following: \*

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

### Description of Proposal

Please describe the proposal including any change of use: \* (Max 500 characters)

NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING STEEL CLADDING, PORTABLE OAK BARREL PLANTERS WITH TOUGHENED GLASS SOUND DIFFUSERS, 2 PARASOLS WITH 4M COVER AND BRASS LIGHTING

Is this a temporary permission? \*  Yes  No

If a change of use is to be included in the proposal has it already taken place? (Answer 'No' if there is no change of use.) \*  Yes  No

Has the work already been started and/or completed? \*

No  Yes - Started  Yes - Completed

### Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

### Agent Details

Please enter Agent details

Company/Organisation: Gray Planning & Development Ltd

Ref. Number: [ ] You must enter a Building Name or Number, or both: \*

First Name: \* Neil Building Name: AYE House

Last Name: \* Gray Building Number: [ ]

Telephone Number: \* [ ] Address 1 (Street): \* Admiralty Park

Extension Number: [ ] Address 2: Rosyth

Mobile Number: [ ] Town/City: \* Dunfermline

Fax Number: [ ] Country: \* UK

Postcode: \* KY11 2YW

Email Address: \* [ ]

Is the applicant an individual or an organisation/corporate entity? \*

Individual  Organisation/Corporate entity

### Applicant Details

Please enter Applicant details

Title: [ ] You must enter a Building Name or Number, or both: \*

Other Title: [ ] Building Name: [ ]

First Name: \* [ ] Building Number: 1

Last Name: \* [ ] Address 1 (Street): \* Commercial Street

Company/Organisation: Metro inns Ltd Address 2: [ ]

Telephone Number: \* [ ] Town/City: \* Edinburgh

Extension Number: [ ] Country: \* United Kingdom

Mobile Number: [ ] Postcode: \* EH6 6JA

Fax Number: [ ]

Email Address: \* [ ]

## Site Address Details

Planning Authority:

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing  Easting

## Pre-Application Discussion

Have you discussed your proposal with the planning authority? \*  Yes  No

## Pre-Application Discussion Details Cont.

In what format was the feedback given? \*

Meeting  Telephone  Letter  Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) \* (max 500 characters)

Title:  Other title:

First Name:  Last Name:

Correspondence Reference Number:  Date (dd/mm/yyyy):

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

## Site Area

Please state the site area:

Please state the measurement type used:  Hectares (ha)  Square Metres (sq.m)

## Existing Use

Please describe the current or most recent use: \* (Max 500 characters)

## Access and Parking

Are you proposing a new altered vehicle access to or from a public road? \*  Yes  No

If Yes please describe and show on your drawings the position of any existing, Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? \*  Yes  No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? \*

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

## Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? \*  Yes  No

Do your proposals make provision for sustainable drainage of surface water?? \* (e.g. SUDS arrangements) \*  Yes  No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? \*

Yes  
 No, using a private water supply  
 No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

### Assessment of Flood Risk

Is the site within an area of known risk of flooding? \*  Yes  No  Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? \*  Yes  No  Don't Know

### Trees

Are there any trees on or adjacent to the application site? \*  Yes  No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

### Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? \*  Yes  No

If Yes or No, please provide further details: \* (Max 500 characters)

outdoor seating area associated with restaurant which will handle its waste per current operations

### Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? \*  Yes  No

### All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? \*  Yes  No

### All Types of Non Housing Development – Proposed New Floorspace Details

For planning permission in principle applications, if you are unaware of the exact proposed floorspace dimensions please provide an estimate where necessary and provide a fuller explanation in the 'Don't Know' text box below.

Please state the use type and proposed floorspace (or number of rooms if you are proposing a hotel or residential institution): \*

Class 3 Restaurant/cafe

Gross (proposed) floorspace (in square meters, sq.m) or number of new (additional) Rooms (if class 7, 8 or 8a): \*

If Class 1, please give details of internal floorspace:

Net trading spaces:  Non-trading space:

Total:

If Class 'Not in a use class' or 'Don't know' is selected, please give more details: (Max 500 characters)

### Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) \*  Yes  No  Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

### Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? \*  Yes  No

### Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? \*  Yes  No

Is any of the land part of an agricultural holding? \*  Yes  No

Are you able to identify and give appropriate notice to ALL the other owners? \*  Yes  No

### Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate B

### Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

I hereby certify that

(1) - No person other than myself/the applicant was an owner [Note 4] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or –

(1) - I have/The Applicant has served notice on every person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was owner [Note 4] of any part of the land to which the application relates.

Name:

Address:

Date of Service of Notice: \*

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding;

or –

(2) - The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have/the applicant has served notice on every person other than myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. These persons are:

Name:

Address:

Date of Service of Notice: \*

Signed: Neil Gray  
 On behalf of: Metro Inns Ltd  
 Date: 27/05/2022  
 Please tick here to certify this Certificate. \*

### Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

- a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? \*
- Yes  No  Not applicable to this application
- b) If this is an application for planning permission or planning permission in principal where there is a crown interest in the land, have you provided a statement to that effect? \*
- Yes  No  Not applicable to this application
- c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? \*
- Yes  No  Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? \*

Yes  No  Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? \*

Yes  No  Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? \*

Yes  No  Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

Site Layout Plan or Block plan.  
 Elevations.  
 Floor plans.  
 Cross sections.  
 Roof plan.  
 Master Plan/Framework Plan.  
 Landscape plan.  
 Photographs and/or photomontages.  
 Other.

If Other, please specify: \* (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. \*  Yes  N/A  
 A Design Statement or Design and Access Statement. \*  Yes  N/A  
 A Flood Risk Assessment. \*  Yes  N/A  
 A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). \*  Yes  N/A  
 Drainage/SUDS layout. \*  Yes  N/A  
 A Transport Assessment or Travel Plan  Yes  N/A  
 Contaminated Land Assessment. \*  Yes  N/A  
 Habitat Survey. \*  Yes  N/A  
 A Processing Agreement. \*  Yes  N/A

Other Statements (please specify). (Max 500 characters)

Planning Statement Licencing Board approved plan

**Declare – For Application to Planning Authority**

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Neil Gray

Declaration Date: 27/05/2022

**Payment Details**

Online payment: [REDACTED] 7;

Payment date:

Created: 27/05/2022 11:28

Gray Planning & Development Ltd.  
Fao:Neil Gray  
AYE House  
Admiralty Park  
Rosyth  
KY11 2YW

Metro Inns Ltd.  
1 Commercial Street  
Edinburgh  
United Kingdom  
EH6 6JA

**Decision date: 24 October 2022**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

New decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.

At 1 Commercial Street Edinburgh EH6 6JA

**Application No: 22/02836/FUL**

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 8 June 2022, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Conditions:-**

**Reasons:-**

1. The proposal is contrary to LDP policy Env 6 and Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. The does not preserve or enhance the character and appearance of the Leith Conservation Area.
2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-04, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Murray Couston directly at [murray.couston@edinburgh.gov.uk](mailto:murray.couston@edinburgh.gov.uk).



**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

## NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

# Report of Handling

**Application for Planning Permission  
1 Commercial Street, Edinburgh, EH6 6JA**

**Proposal: New decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.**

**Item – Local Delegated Decision  
Application Number – 22/02836/FUL  
Ward – B13 - Leith**

## **Recommendation**

It is recommended that this application be **Refused** subject to the details below.

## **Summary**

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The application site is an extremely narrow cobbled section of Commercial Wharf. The site is currently operating as a car park and an external seating area for the adjacent restaurant situated within 1 Commercial Street.

The restaurant is the ground floor of a Victorian building in a prominent location on the west side of the Water of Leith opposite the Shore in Leith. It stands on the corner of Commercial Street and Commercial Wharf. Commercial Street forms part of the primary coast road around the north of the city. Commercial Wharf is a setted cul-de-sac leading to a converted warehouse to the immediate south.

The building is listed category B, and is surrounded by other listed buildings.

### **Description Of The Proposal**

Planning permission is sought for a decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.

### **Supporting Information**

A planning statement has been submitted.

### **Relevant Site History**

19/04799/FUL

1 Commercial Street

Edinburgh

EH6 6JA

New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect)

Refused and Enforced

6 December 2019

### **Other Relevant Site History**

### **Consultation Engagement**

Environmental Protection

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 24 October 2022

**Date of Advertisement:** 17 June 2022

**Date of Site Notice:** 17 June 2022

**Number of Contributors:** 7

## **Section B - Assessment**

### **Determining Issues**

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling material considerations for not approving them?

If the proposals do not comply with the development plan, are there any compelling material considerations for approving them?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations; and
- any other identified material considerations.

## **Assessment**

To address these determining issues, it needs to be considered whether:

### **a) The proposals harm the character or appearance of the conservation area?**

The proposals are of a detrimental design and form which does not reflect a permanent sense of place. These structures form highly incongruous developments which detract from the quality of the streetscape and disrupt the degree of separation between the waterfront and the traditional listed building.

The proposal does not preserve or enhance the character and appearance of the Leith Conservation Area.

### **Conclusion in relation to the conservation area**

The proposal does not have regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is not acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

### **b) The proposals comply with the development plan?**

The development plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policy Env 6
- LDP Housing policy Hou 7

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policy Env 6. The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering policy Hou 7.

## Conservation Area

Edinburgh Local Development Plan policy Env 6 highlights the importance of preserving the character and appearance of the conservation area. In addition, the nonstatutory Guidance for Businesses advises that proposals should be architecturally compatible in design, scale and materials with the character of the conservation area.

The proposals are of a detrimental design and form which does not reflect a permanent sense of place. These structures form highly incongruous developments which detract from the quality of the streetscape and disrupt the degree of separation between the waterfront and the traditional listed building.

The proposal does not preserve or enhance the character and appearance of the Leith Conservation Area. The proposal is contrary to LDP policy Env 6.

## Residential Amenity

Policy Hou 7 of the (LDP) states that developments, including changes of use, which will have a materially detrimental effect on living conditions of nearby residents will not be permitted.

The proposal involves the active utilisation of an outdoor area for customers to eat and drink in. Although sound diffusers have been proposed to mitigate the impacts of the proposal on neighbouring premises, the extensive level of provision for customers to eat and drink both inside the restaurant and outside in the decked area has the potential to generate significant levels of noise and disturbance for nearby residents residing in the tenement buildings on Commercial Street and Commercial Wharf throughout the course of the day, including into unsociable hours.

The proposal has a detrimental impact on the amenity of neighbouring residents and does not comply with LDP Policy Hou 7.

## Road Safety

The addition of outdoor seating shall not significantly alter the intensity of the premises current use. There are no road safety concerns from the proposed use.

## **Conclusion in relation to the Development Plan**

The proposal does not comply with the Local Development Plan.

### **c) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal does not comply with Paragraph 29 of SPP.

### Emerging policy context

The Draft National Planning Framework 4 has been consulted on but has not yet been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

### Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

### Public representations

A summary of the representations is provided below:

#### *material considerations*

- impact on conservation area: this has been addressed above;
- impact on amenity: this has been addressed above;

### **Conclusion in relation to identified material considerations**

The proposal is not acceptable with regards to the above.

### **Overall conclusion**

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

### **Reasons**

1. The proposal is contrary to LDP policy Env 6 and Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. The does not preserve or enhance the character and appearance of the Leith Conservation Area.

2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

### **Background Reading/External References**

To view details of the application go to the [Planning Portal](#)

**Further Information** - [Local Development Plan](#)

**Date Registered:** 8 June 2022

### **Drawing Numbers/Scheme**

01-04

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Murray Couston, Planning Officer  
E-mail:murray.couston@edinburgh.gov.uk

## Appendix 1

### **Consultations**

NAME: Environmental Protection

COMMENT: No objections

DATE:

The full consultation response can be viewed on the Planning & Building Standards Portal.

[neil@grayplanning.co.uk](mailto:neil@grayplanning.co.uk)

**Date:** 13 October 2021  
**Our Ref:** LRB6.2/BR

Dear Mr Gray,

**THE CITY OF EDINBURGH PLANNING LOCAL REVIEW BODY  
REQUEST FOR REVIEW – APPLICATION NO 19/04799/FUL  
REQUEST FOR REVIEW –1 COMMERCIAL STREET, EDINBURGH  
TOWN AND PLANNING (SCOTLAND) ACT 1997 AS AMENDED BY THE PLANNING  
ETC (SCOTLAND) ACT 2006**

I refer to your request for a review on behalf of Metro Inns Ltd for a new decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect) at 1 Commercial Street, Edinburgh. This was dealt with by the Chief Planning Officer under delegated powers.

The request was considered by the City of Edinburgh Planning Local Review Body (LRB) at a meeting on Wednesday 27 May 2020, where the decision was to continue consideration of the request for review in order to:

1. Allow for a site visit to be conducted safely under social distancing measures.
2. Request a response from Environmental Protection on this proposal.
3. Confirm that the required neighbour notifications had been issued.

The request was further considered by the City of Edinburgh Planning Local Review Body (LRB) at a meeting on Thursday 30 September 2021.

**Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission and enforce.

**Reasons for Refusal:**

1. The proposal is contrary to LDP policies Des 4 and Env 6 and the Council's Non Statutory Guidance for Business. The proposal is not acceptable in principle and does not preserve or enhance the character and appearance of the Leith Conservation Area. The use of the space and the siting of the furniture associated with the space has a detrimental impact on the character and appearance of the Leith Conservation Area.

2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents

### **Assessment**

At the meeting on 30 September 2021, following a site visit on 16 September 2021, the LRB had been provided with copies of the notice of review submitted by you including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice, the report of handling and a letter from environmental protection.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were numbered 01-03 Scheme 1, being the drawings shown under the application reference number 1904799/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it and agreed to determine the review using the information circulated.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the Edinburgh Local Development Plan.
  - Edinburgh Local Development Plan Policies Des 4 (Development Design – Impact on Setting);
  - Env 6 (Conservation Areas - Development);
  - Hou 7 (Inappropriate Uses in Residential Areas).
- 2) Relevant Non-Statutory Guidelines.  
Listed Buildings and Conservation Areas
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

### **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Whether the colour of the planters was appropriate.
- If it was the additional area of decking which had been added during Covid for which the applicant was seeking planning permission in retrospect.
- That additional items which had been added did not form part of the Review.
- That the decking had an unsightly appearance.

- That it was clearly specified that the appellant leased the premises from Star Bars.
- That the statement from Environmental Protection advised that there was no nearby overlooking properties.
- That the objection was from a resident at Commercial Wharf and specified issues associated with access for refuse vehicles, rather than noise concerns.
- That Environmental Health confirmed that there were no noise complaints, and that there had been no recent change to this in the intervening period since the matter was last considered by the LRB panel 1 on 27 May 2020.
- That the impact on the conservation area was concerning.
- Whether the appellant had the option to resubmit their application with revised proposals.
- Whether there was a difference between refuse and the option to enforce and refuse.
- That an enforcement action would take place in the event of the LRB upholding the decision of the Chief Planning Officer to refuse planning permission.
- That the decking which was in situ when the site visit was made did not resemble what was reflected on the application as originally submitted.
- That there was a potential conflict between users of the decking and people crossing the road.
- That if a different operator may at one stage take on the premises, then the permission if granted would then pass onto the new operator.
- That the application should be overturned on the basis of Env 6.
- That the application which was presented was what would be determined by the LRB and that if there was any difference to this, the appellant would need to submit a further planning application for any differences.
- That the outside use was appropriate during Covid.
- That the decking detracted from the visual interests as set out within the Leith Conservation Character Appraisal, and the proposals would have a detrimental impact on this space between the Water of Leith and the adjacent buildings
- That the additions as seen on the site visit were of concern, which did not follow the form of the original planning application, but that the application would be assessed by the LRB based on what was outlined within the planning appeal.
- That the materials used were not of a high enough quality to have in a conservation area.
- That it was understood why the appellant would wish to encourage patrons to the water of Leith area.

Having taken all the above matters into consideration and although there was some sympathy for the proposals, the LRB was of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Contact**

Please contact Natalie Le Couteur on [natalie.le.couteur@edinburgh.gov.uk](mailto:natalie.le.couteur@edinburgh.gov.uk) if you have any queries about this letter.

Yours sincerely

Natalie Le Couteur

for the Clerk to the Review Body

### **Notes:**

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within six weeks of the date of the decision.
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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## LICENSING BOARD

## Premises Licence

Issued by The City of Edinburgh Licensing Board under the terms and conditions  
of the Licensing (Scotland) Act 2005

Premises licence number	08/11947
-------------------------	----------

Date of commencement of licence	1 September 2009
---------------------------------	------------------

Postal address of premises	
1 Commercial Street Edinburgh	
Postcode EH6 6JA	Telephone number

Description of premises
Premium Dining Public House & Restaurant

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## LICENSING BOARD

Licensed hours		
	On Sale	Off Sale
Monday	11:00 to 01:00	11:00 to 22:00
Tuesday	11:00 to 01:00	11:00 to 22:00
Wednesday	11:00 to 01:00	11:00 to 22:00
Thursday	11:00 to 01:00	11:00 to 22:00
Friday	11:00 to 01:00	11:00 to 22:00
Saturday	11:00 to 01:00	11:00 to 22:00
Sunday	12:30 to 01:00	12:30 to 22:00

Name and postal address (or registered address if a company), telephone number and email (where relevant) of holder of premises licence

Punch Partnerships (PTL) Limited  
Elsley Court  
20-22 Great Titchfield Street  
London  
W1W 8BE

Registered number of premises licence holder, e.g. company number, charity number (where applicable)

03512363

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## LICENSING BOARD

**Name, postal address and telephone number of premises manager named in the operating plan**

Ms Carol Ann Lawrie  
1f3  
175 Gorgie Road  
Edinburgh  
EH11 1TJ

0131 623 6700

**Number of the personal licence held by the premises manager named in the operating plan and the name of the issuing Licensing Board**

Premises Manager number : 14/02861

Issuing Licensing Board: City of Edinburgh

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## LICENSING BOARD

### Licence Conditions

The mandatory conditions set out in schedule 3 to the Licensing (Scotland) Act 2005 will apply.

The following local conditions will also apply:-

[1. All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises]

## OPERATING PLAN

Licensing (Scotland) Act 2005, section 20(2)(b)(i)

### Question 1

STATEMENT REGARDING ALCOHOL BEING SOLD ON PREMISES/OFF PREMISES OR BOTH

<i>1(a) Will alcohol be sold for consumption solely ON the premises?</i>	<b>NO</b>
<i>1(b) Will alcohol be sold for consumption solely OFF the premises?</i>	<b>NO</b>
<i>1(c) Will alcohol be sold for consumption both ON and OFF the premises?</i>	<b>YES</b>
<i>*Delete as appropriate</i>	

### Question 2

STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION ON PREMISES

<i>Day</i>	<i>ON Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>	11AM	1AM
<i>Tuesday</i>	11AM	1AM
<i>Wednesday</i>	11AM	1AM
<i>Thursday</i>	11AM	1AM
<i>Friday</i>	11AM	1AM
<i>Saturday</i>	11AM	1AM
<i>Sunday</i>	12.30PM	1AM

**Question 3**

**STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION OFF PREMISES**

<i>Day</i>	<i>OFF Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>	11AM	10PM
<i>Tuesday</i>	11AM	10PM
<i>Wednesday</i>	11AM	10PM
<i>Thursday</i>	11AM	10PM
<i>Friday</i>	11AM	10PM
<i>Saturday</i>	11AM	10PM
<i>Sunday</i>	12.30PM	10PM

**Question 4**

**SEASONAL VARIATIONS**

<i>Does the applicant intend to operate according to seasonal demand</i>	<b>YES</b>
--	------------

*\*If YES – provide details*

To benefit from the annual extensions determined by the Licensing Board for the sale of alcohol for consumption on the premises during the Edinburgh Festival and festive period, in line with existing permissions.

**Question 5**

PLEASE INDICATE THE OTHER ACTIVITIES OR SERVICES THAT WILL BE PROVIDED ON THE PREMISES IN ADDITION TO SUPPLY OF ALCOHOL

COL. 1 5(a) Activity	COL. 2 Please confirm YES/NO	COL. 3 To be provided during core licensed hours – please confirm YES/NO	COL. 4 Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Accommodation	NO	N/A	N/A
Conference facilities	YES	YES	YES
Restaurant facilities	YES	YES	YES
Bar meals	YES	YES	NO
5(b) Activity Social functions including:	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Receptions including Weddings, funerals, birthdays, retirements etc.	YES	YES	YES
Club or other group meetings etc.	YES	YES	YES
5(c) Activity Entertainment including:	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Recorded music – see 5(g)	YES	YES	YES
Live performances – see 5(g)	YES	YES	NO
Dance facilities	YES	YES	NO

<i>Theatre</i>	YES	YES	NO
<i>Films</i>	YES	YES	NO
<i>Gaming</i>	YES	YES	NO
<i>Indoor/outdoor sports</i>	NO	YES	NO
<i>Televised sport</i>	YES	YES	YES
<b>5(d)</b> <i>Activity</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Outdoor drinking facilities</i>	YES	YES	YES
<b>5(e)</b> <i>Activity</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Adult entertainment</i>	NO	NO	NO

*Where you have answered YES in respect of any entry in column 4 above, please provide further details below.*

The activity/activities &/or service will cease 30 minutes after the terminal hour for the sale of alcohol (where alcohol is being consumed with a meal).

Activities/services may continue during the extended hours sought in Question 4 above.

*5(f) any other activities*

*If you propose to provide any activities other than those listed in 5(a) – (e) please provide details or further information in the box below.*

*Karaoke, charity casino night during core hours and any seasonal variation hours.*

5(g) Late night premises opening after 1.00am

Where you have confirmed that you are providing live or recorded music, will the decibel level exceed 85dB?	NO
When fully occupied, are there likely to be more customers standing than seated?	NO
*Delete as appropriate	

**Question 6 (On-sales only)**

*CHILDREN AND YOUNG PERSONS*

6(a)	When alcohol is being sold for consumption on the premises will children or young persons be allowed entry	YES
	*Delete as appropriate	

6(b) Where the answer to 6(a) is YES provide statement of the **TERMS** under which they will be allowed entry

Children and young persons will only be allowed access if consuming a meal.

6(c) Provide statement regarding the **AGES** of children or young persons to be allowed entry

0 to 17 years

6(d) Provide statement regarding the **TIMES** during which children and young persons will be allowed entry

11AM to 1AM

6(e) Provide statement regarding the **PARTS** of the premises to which children and young persons will be allowed entry

All parts of the premises to which the public have access.

**Question 7**

**CAPACITY OF PREMISES**

*What is the proposed capacity of the premises to which this application relates?*

160

**Question 8**

**PREMISES MANAGER** (NOTE: not required where application is for grant of provisional premises licence)

*Personal details*

8(a) *Name*

Carol Ann Lawrie

8(b) *Date of birth*

17 April 1962

8(c) *Contact address*

175/3 Gorgie Road  
Edinburgh  
EH11 1TJ

8(d) *Email address*

8(e) *Personal licence*

<i>Date of issue</i>	<i>Name of Licensing Board issuing</i>	<i>Reference no. of personal licence</i>
09 April 2014	City of Edinburgh Licensing Board	14/02861

**DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT**

**If signing on behalf of the applicant please state in what capacity.**

The contents of this operating plan are true to the best of my knowledge and belief.

Signature ..... \* (see note below)

Date 12/05/2016 .....

Capacity ..... ~~APPLICANT~~/AGENT (delete as appropriate).

Telephone number and email address of signatory .....

**\* Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

Stephen J. McGowan  
Partner - Head of Licensing (Scotland)  
TLT LLP  
140 West George Street, Glasgow, G2 2HG  
+44 (0)333 006 1203  
Stephen.McGowan@TLTsolicitors.com

18 MAY 2016



LICENSING BOARD

SUMMARY PREMISES LICENCE

Issued by The City of Edinburgh Licensing Board under the terms and conditions of the Licensing (Scotland) Act 2005

Premises licence number 08/11947

Postal address of premises

1 Commercial Street  
Edinburgh

Postcode EH6 6JA

Telephone number

Description of premises

Premium Dining Public House & Restaurant

Name and postal address (or registered address if a company) of premises licence holder

Punch Partnerships (PTL) Limited  
Elsley Court  
20-22 Great Titchfield Street  
London  
W1W 8BE

Registered number of premises licence holder, e.g. company number, charity number (where applicable)

03512363

Name of premises manager named in the operating plan

Ms Carol Ann Lawrie

Granted: 5 March 2018



## LICENSING BOARD

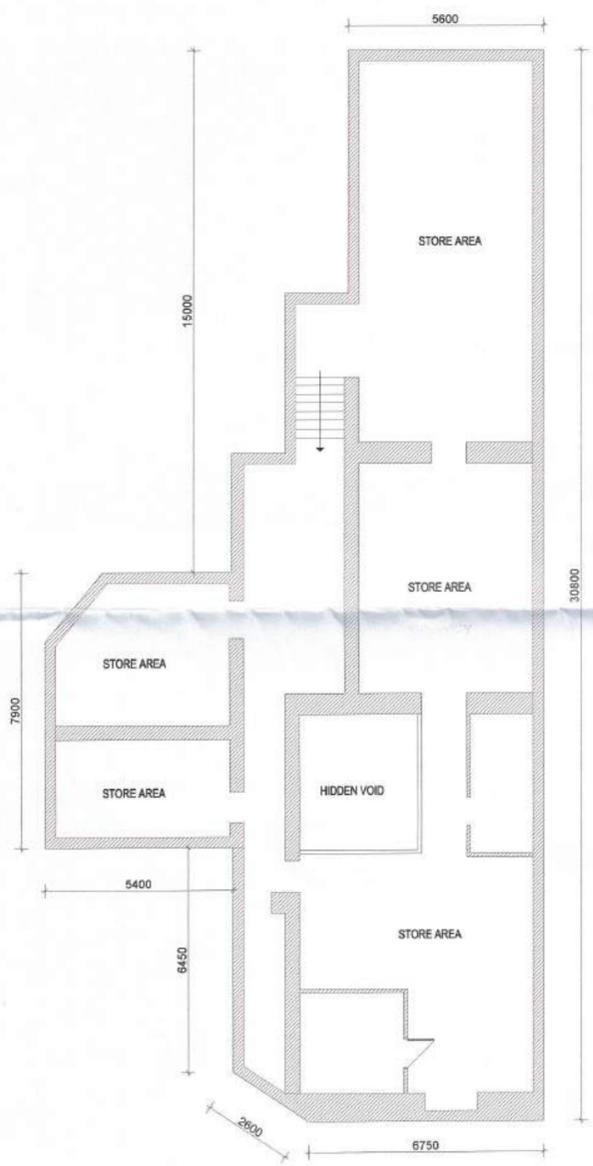
### Licence Conditions

The mandatory conditions set out in schedule 3 to the Licensing (Scotland) Act 2005 will apply.

The following local conditions will also apply:-

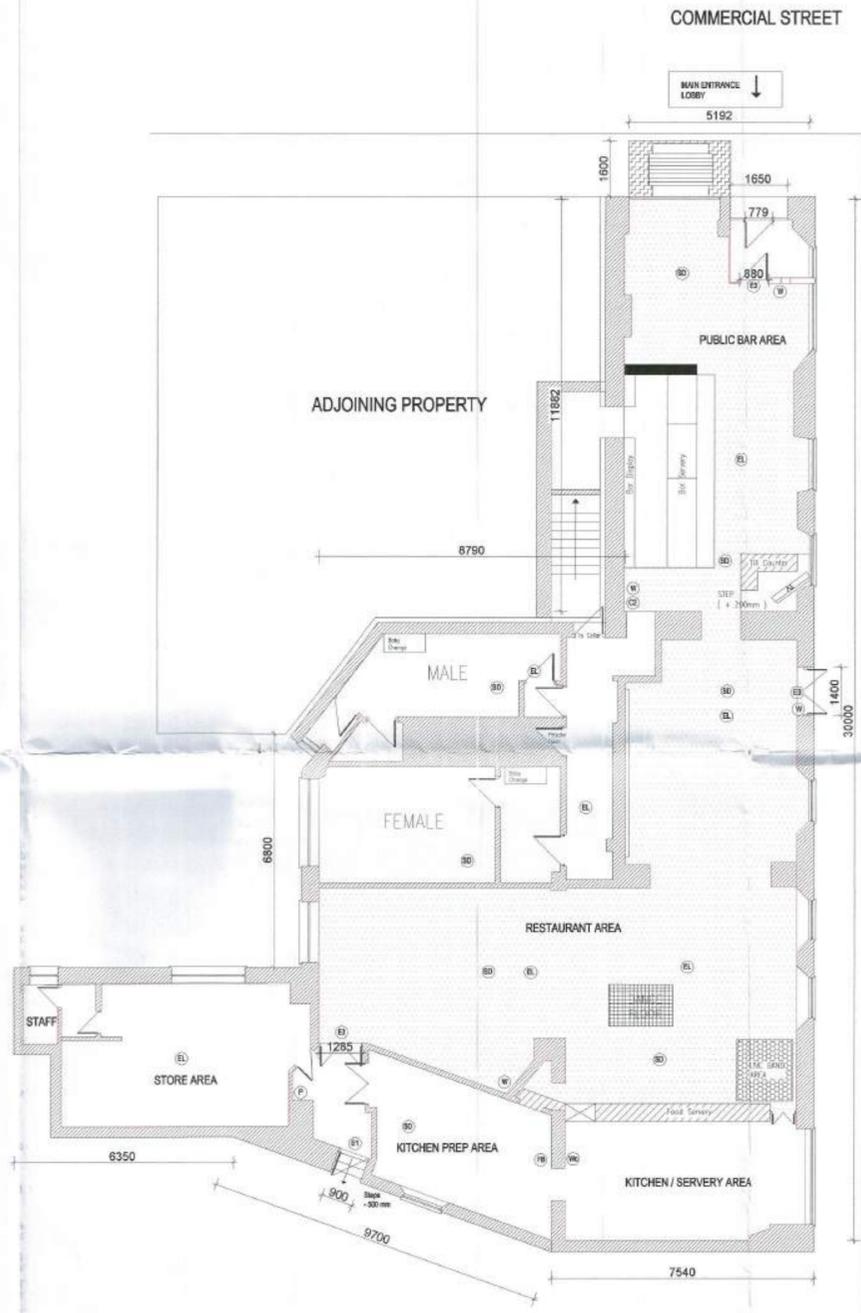
- (1) All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises

**NOTES:**  
 This drawing is copyright. It is sent to you in confidence and must not be reproduced or disclosed to third parties without our prior permission.  
 This drawing is to be read in conjunction with all relevant consultants, specialist manufacturers drawings and specifications.  
 Any discrepancies in dimensions or details on or between these drawings should be drawn to your attention.  
 All dimensions are in millimetres unless noted otherwise.  
 Any surveyed information incorporated within this drawing cannot be guaranteed as accurate unless confirmed by fixed dimension.  
 All electrical works required to meet the requirements of Part P (Electrical Safety) must be designed, installed, inspected and tested by a person competent to do so.  
 This may require an appropriate BS 7671 electrical installation certificate to be issued for the work by a person competent to do so.

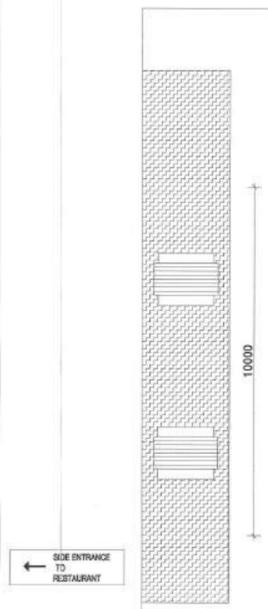


**BASEMENT / CELLAR AREAS**

**NOTE:**  
 BASEMENT CONTAINS OTHER AREAS /CHAMBERS WHICH COULD NOT BE ACCESSED OR HAVE BEEN BLOCKED UP



**GROUND FLOOR PLAN  
 No 1 COMMERCIAL STREET**



**LEGEND**

- (EL) EMERGENCY LIGHTING
  - (SD) SMOKE DETECTOR
  - (W) WATER EXTINGUISHER
  - (F) FOAM EXTINGUISHER
  - (D) DRY POWDER EXTINGUISHER
  - (FB) FIRE BLANKET
  - (CO) CO2 EXTINGUISHER
  - (WC) WET CHEMICAL EXTINGUISHER
  - (ES) ILLUMINATED 'EXIT' SIGN
  - (EA) ILLUMINATED 'EMERGENCY EXIT' SIGN
  - (ED) ILLUMINATED 'EXIT' SIGN WITH DIRECTIONAL ARROW
  - CC CIGARETTE VENDING MACHINE
  - AMP FRUIT MACHINE
  - SMT QUIZ MACHINE
  - TV TELEVISION / PLASMA SCREEN
  - JBX JUNK BOX (AUDIBLE THROUGHOUT PREMISES)
  - DB DART BOARD
  - LP LOW LEVEL PARTITIONS
  - IF INTERNAL FIXED SEATING
  - ES EXTERNAL SEATING AREA
- POOL TABLE
  - CHILDREN & YOUNG PERSON AREAS (Where children and/or young persons are permitted entry to the premises they will be allowed to use the toilets and all appropriate means of egressing the toilet and the other part or parts of the premises to which they are allowed entry)
  - LIVE MUSIC / DJ (ALSO SEE THROUGHOUT PREMISES) KARAOKE WILL BE PROVIDED THROUGHOUT THE PREMISES RECORDED MUSIC WILL BE PROVIDED THROUGHOUT THE PREMISES
  - DANCE FLOOR AREA
  - PAVED SEATING AREA
  - PAYMENT SEATING
  - EXTRA LICENSED AREA (ELA)
  - NET TRADE AREA 240 SQM
- ALCOHOL WILL BE SOLD WITHIN THE WHOLE OR PARTS OF THE PREMISES INCLUDED WITHIN THE RED LINE.  
 FOOD MAY ALSO BE PROVIDED WITHIN THE AREA WHERE ALCOHOL WILL BE SOLD AND CONSUMED.  
 ANY CONFERENCE FACILITIES/RECEPTIONS ETC/CLUB OR OTHER GROUP MEETINGS MAY TAKE PLACE THROUGHOUT THE PREMISES.  
 THEATRE FACILITIES MAY BE PROVIDED THROUGHOUT THE PREMISES.  
 GAMING WILL TAKE PLACE WITHIN THE PREMISES.

Note: Children aged 0-17 years allowed on premises 11.00-01.00hrs

This is the layout plan approved by the City of Edinburgh Licensing Board on:  
 Date: 30/03/09  
 Relative to Premises Licence Number: 08/11947.  
 Gill Lindsay  
 Clerk of the Licensing Board

REV	DATE	DESCRIPTION	INITIAL	CHECKED
B	16.10.08	Basement areas added	DGB	
A	13.05.08	Rear store and corridor added. Music area also added	DGB	

**Head Projects**  
 CLIENT: Punch Taverns Plc  
 PROJECT: Scottish Licensing  
 TITLE: Guilianos on the Shore 1 Commercial St Edinburgh - Outlet - 727721  
 SCALE: 1:100  
 DATE: 18.03.2008  
 PROJECT NO: Tier 2  
 DRAWN: HEJ  
 CHECKED: DGB  
 727721 | B

1/12/08  
 Approved Plans

Martin McMullen Architect.  
209 Easter Road  
Edinburgh  
Scotland  
EH6 8LG

Metro Inns Ltd.  
FAO: Mr Pat Doherty  
1 Commercial Street  
Edinburgh  
Scotland  
EH6 6JA

**Decision date: 6 December 2019**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect)

At 1 Commercial Street Edinburgh EH6 6JA

**Application No:** 19/04799/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 8 October 2019, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused and Enforced** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Conditions:-**

1. The proposal is contrary to LDP policies Des 4 and Env 6 and the Council's Non Statutory Guidance for Business. The proposal is not acceptable in principle and does not preserve or enhance the character and appearance of the Leith Conservation Area. The use of the space and the siting of the furniture associated with the space has a detrimental impact on the character and appearance of the Leith Conservation Area.
2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-03, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Adam Gloser directly on .

*D R Leech*

**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

## NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



# Guidance for Businesses

November 2021



# Guidance for Businesses



## Who is this guidance for?

This guidance is intended to assist businesses in preparing applications to change the use of a property or carry out alterations to a business premises.



## Policy Context

This document interprets policies in the *Edinburgh Local Development Plan*. Relevant policies are noted in each section and should be considered alongside this document.



**Misc:** Student Housing, Radio Telecommunications, Open Space Strategy etc.

This document and other non-statutory guidance can be viewed at: [www.edinburgh.gov.uk/planningguidelines](http://www.edinburgh.gov.uk/planningguidelines)

## Listed Buildings and Conservation Areas

If the building is listed or located within a Conservation Area, guidance on *Listed Buildings and Conservation Areas* must also be considered. Boxes throughout this guideline give specific information relating to Listed Buildings and Conservation Areas. You can check if your property is listed or located within a conservation area on the Council's website [www.edinburgh.gov.uk/planning](http://www.edinburgh.gov.uk/planning)

## Business Gateway

Business Gateway offers businesses free practical help and guidance. Whether you're starting up or already running a business, and provide access to business support and information services.

To get more information on help for your business, or to book an appointment with our experienced business advisers please contact our Edinburgh office.

Contact details:

**Business Gateway (Edinburgh Office)**  
**Waverley Court**  
**4 East Market Street**  
**Edinburgh**  
**EH8 8BG**  
**Tel: 0131 529 6644**

Email: [bglothian@bgateway.com](mailto:bglothian@bgateway.com)

[www.bgateway.com](http://www.bgateway.com)

This guidance was initially approved in December 2012 and incorporates additional text on short term commercial visitor accommodation approved in February 2013, and minor amendments approved in February 2014, February 2016, March 2018 and February 2019.

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Planning Permission		When is planning permission required?		Understanding your shopfront	
What is a change of use?		Changing a shop to Class 3 use or hot food takeaway		Context	
Listed Buildings and Conservation Areas		Selling cold food for consumption off the premises		New Design	
<b>What Other Consents Might Be Required? 5</b>		What should I do if it is permitted development?		Paint and Colour	
Listed Building Consent		<b>What to consider if planning permission is required</b>		Security	
Advertisement Consent		Protecting Shops		Blinds and Canopies	
Building Warrant		Restaurants, cafés, snack bars and other Class 3 Uses		Automatic Teller Machines	
Road Permit		Hot food takeaways		Air Conditioning and Refrigeration	
Licensing		Public houses, entertainment venues and hotels outwith Class 7 (Hotels and Hostels)		<b>Signage and Advertisements</b>	<b>20</b>
Table and Chairs Permit		Ventilation		Projecting and Hanging Signs	
Biodiversity		Design		Fascia	
Trees		Noise		Princes Street	
<b>Changing a Residential Property to a Commercial Use</b>	<b>6</b>	<b>Changing a Commercial Unit to Residential Use</b>	<b>11</b>	Directional Signs	
When is planning permission required?		When is permission required?		Guest Houses	
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Private day nurseries		Amenity			
Running a business from home		<b>Design</b>			
What should I do if it is permitted development?		Retain the shopfront			
<b>What to consider if planning permission is required</b>		Simple contemporary design			
Amenity		Residential appearance			
Road safety and parking		Consider the privacy of residents			
Parking in gardens					
Flatted properties					
Conditions					

# Do I need Planning Permission?

## Planning Permission

Planning permission is required for many alterations, and changes of use. However, some work can be carried out without planning permission; this is referred to as 'permitted development'. Permitted development is set out in legislation.

Common enquiries are set out in the relevant chapters of this document.

If you believe your building work is 'permitted development', you can apply for a [Certificate of Lawfulness](#) to confirm that the development is lawful and can go ahead. This can be applied for online at [www.eplanning.scot](http://www.eplanning.scot)

## What is a change of use?

Most properties are classified under categories known as a 'Use Class'. For example, shops are grouped under Class 1 and houses under Class 9. Some uses fall outwith these categories and are defined as 'sui generis', meaning 'of its own kind'. This is set out in The Use Classes (Scotland) Order 1997 (as amended).

Changing to a different use class is known as a change of use and may require planning permission, although some changes between use classes are allowed without planning permission. Planning permission is not required when both the present and proposed uses fall within the same 'class' unless there are specific restrictions imposed by the council. The Scottish Government Circular 1/1998 contains guidance on use classes.

## Listed Buildings and Conservation Areas

Fewer alterations are considered to be permitted development and most changes to the outside of a building, including changing the colour, require planning permission. More information on other consents which may be required is included on the next page.

## Listed Building Consent

Listed building consent is required for works affecting the character of listed buildings and also applies to the interior of the building and any buildings within the curtilage. Planning permission may also be required in addition to Listed Building Consent. If your building is listed, specific guidance on [Listed Buildings and Conservation Areas](#) must also be considered along with this document.

# What Other Consents Might Be Required?

## Advertisement Consent

Advertisements are defined as any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, and employed wholly or partly for the purpose of advertisement, announcement or direction.

While many advertisements require express consent, certain types do not need express consent as they have 'deemed consent'. You can check this by consulting [The Town and Country Planning \(Control of Advertisements\) \(Scotland\) Regulations 1984](#). Advertisements displayed in accordance with the advert regulations do not require advertisement consent.

Illuminated shopfront signage in a conservation area requires advertisement consent.

## Building Warrant

Converted, new or altered buildings may require a Building Warrant. There is more Building Standards information at [www.edinburgh.gov.uk/buildingwarrants](http://www.edinburgh.gov.uk/buildingwarrants). For detailed information please go to the [Scottish Government website](#).

## Road Permit

You must get a permit to the Council if you want to carry out work in or to occupy a public street. A [road permit](#) will be required if forming a new access or driveway or if placing a skip or excavation in a public road. It will also be required for scaffolding

or to occupy a portion of the road to place site huts, storage containers, cabins, materials or contractors plant, to put up a tower crane or to operate mobile cranes, hoists and cherry pickers from the public highway. For more information contact the Areas Roads Manager in your [Neighbourhood Team](#).

## Licensing

Some activities, such as the sale and supply of alcohol or late hours catering, require a licence. Please contact [Licensing](#) for more information on 0131 529 4208 or email [licensing@edinburgh.gov.uk](mailto:licensing@edinburgh.gov.uk).

[The Civic Government \(Scotland\) Act 1982 \(Licensing of houses in Multiple Occupation\) Order 2000](#), requires operators of HMOs to obtain a licence allowing permission to be given to occupy a house as a HMO where it is the only or principal residence of three or more unrelated people.

## Table and Chairs Permit

If your business sells food and drink you may be able to get a permit from the Council to put tables and chairs on the public pavement outside your business.

A [tables and chairs permit](#) allows you to put tables and chairs on the public pavement between 9am and 9pm, seven days a week and is issued for either six or twelve months. For more information please email [TablesChairsPermits@edinburgh.gov.uk](mailto:TablesChairsPermits@edinburgh.gov.uk) or phone 0131 529 3705.

## Biodiversity

Some species of animals and plants are protected

by law. Certain activities, such as killing, injuring or capturing the species or disturbing it in its place of shelter, are unlawful. It is also an offence to damage or destroy a breeding site or resting place (or obstruct access to).

If the presence of a European Protected Species (such as a bat, otter or great crested newt) is suspected, a survey of the site must be taken. If it is identified that an activity is going to be carried out that would be unlawful, a license may be required.

More information on European Protected Species, survey work and relevant licenses is available on the [Scottish Natural Heritage website](#).

## Trees

If there are any trees on the site or within 12 meters of the boundary, they should be identified in the application. Please refer to [the Edinburgh Design Guidance \(chapter 3.5\)](#) for advice.

All trees in a Conservation Area or with a Tree Preservation Order are protected by law, making it a criminal offence to lop, top, cut down, uproot wilfully, damage or destroy a tree unless carried out with the consent of the council. To apply for works to trees, go to [www.eplanning.scot](http://www.eplanning.scot).

## Trade Waste

Proposals for commercial use of a property should ensure that there will be sufficient storage space off street to store segregated waste containers, in line with the Council's Trade Waste policy.

# Changing a Residential Property to a Commercial Use

## What does this chapter cover?

### Changes of use to:

- guest houses
- short term commercial visitor accommodation
- house in multiple occupation (HMOs)
- private day nurseries
- running a business from home

This guideline is not intended to address new hotel development which is covered by [Edinburgh Local Development Plan](#) (LDP) Policy Emp 10 Hotel Development.

Where an extension to a residential property is required to then run a business from home, please refer to the [Guidance for Householders](#) to understand what permissions are required.

## When is planning permission required?

Some activities within a residential property can be undertaken without requiring planning permission. Some common enquiries are given below.

## What should I do if it is permitted development?

If you believe planning permission is not required, you can apply for a [Certificate of Lawfulness](#) for legal confirmation.

## Using your home as a guest house

Planning permission will not be required for the use of a house as a bed and breakfast or guest house if:

- The house has less than four bedrooms and only one is used for a guest house or bed and breakfast purpose
- The house has four or more bedrooms and no more than two bedrooms are used for a guest house or bed and breakfast purpose

Planning permission will always be required if a flat is being used as a guest house or bed and breakfast, regardless of the number of rooms.

## Short Term Commercial Visitor Accommodation

The change of use from a residential property to short term commercial visitor accommodation may require planning permission. In deciding whether this is the case, regard will be had to:

- The character of the new use and of the wider area
- The size of the property
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand, and
- The nature and character of any services provided.

## Houses of Multiple Occupation (HMOs)

The sharing of accommodation by people who do not live together as a family is controlled at the point at which there is considered to be a material change of use. For houses, Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 considers this to be when more than 5 people are living together, other than people living together as a family. As with houses, the Council would also expect a material change of use to occur in flats when more than 5 unrelated people share accommodation. All planning applications for Houses in Multiple Occupancy (HMOs) are assessed using LDP Policy Hou 7: Inappropriate Uses in Residential Areas, having regard to the advice below.

## Private day nurseries

The change of use from a residential property to a private day nursery requires planning permission.

Where child minding is undertaken from a residential property, whether a change to a private day nursery has occurred will be assessed on a case by case basis. Consideration will be given to the number of children, the frequency of activity and the duration of stay. The criteria under 'Running a business from home' should also be considered.

## Running a business from home

Proposals which comply with all the following may not need planning permission, but always check with the council first.

- There should be no change in the character of the dwelling or the primary use of the area. For example signage, display of commercial goods, increased pedestrians and vehicular movements, noise etc.
- There should be no more than the parking of a small vehicle used for commercial and personal purposes within the curtilage of a dwelling house.
- Any ancillary business should not be detrimental to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, ash, dust, or grit.
- There should be no impact on the amenity or character of the area as a result of visitors or deliveries to the property.
- The primary use of the property must be domestic and any members of staff on the premises should have no impact on the amenity and character of the property.

## What to consider if planning permission is required

### Policy Hou 7

Sets out when uses will not be permitted in predominately residential or mixed use areas i.e. uses which would have a materially detrimental effect on the living conditions of nearby residents.

## Amenity

Proposals for a change of use will be assessed in terms of their likely impact on neighbouring residential properties. Factors which will be considered include background noise in the area and proximity to nearby residents.

In the case of short stay commercial leisure apartments, the Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest.

In the case of private day nurseries, whether nearby residential uses overlook the garden will also be considered. This is due to the potential for increased noise to those households.

## Road Safety and Parking

The *car parking standards* define the levels of parking that will be permitted for new development and depends on the scale, location, purpose of use and the number of staff. Parking levels will also be dependent on the change of use and proximity to public transport.

The existing on-street parking and traffic situation will be important considerations in this assessment. The location should be suitable to allow people and deliveries to be dropped-off and collected safely. This is especially important for children going to and from a private day nursery. The potential impact on vulnerable road users – cyclists and pedestrians – will also be a consideration.

## Parking in Gardens

The provision of new car parking should have regard to character and setting of the property and should normally preserve a reasonable amount of front garden. In a conservation area parking in the front garden would only be considered if there was an established pattern and it was part of the character of the area. Parking in the front garden of a listed building is not likely to be supported and there is normally a presumption against loss of original walling and railings and loss of gardens. Further information on the design of parking in gardens can

be found in the *Guidance for Householders*.

## Flatted Properties

Change of use in flatted properties will generally only be acceptable where there is a private access from the street, except in the case of HMOs. Nurseries must also benefit from suitable garden space.

## Further information

If a proposal has the potential to result in impacts then these should be addressed at the outset so they can be considered by the case officer. Examples of information that may be required include:

- An acoustic report if there is potential for noise impact.
- Details of ventilation systems if the application has the potential to create odour problems, and details of the noise impact of any proposed ventilation system.
- Details of any plant and machinery
- Details of attenuation measures if structure-borne and air-borne vibrations will occur.

# Changing to a Food or Drink Use

## What does this chapter cover?

Uses such as:

- Restaurants, cafes and snack bars (Class 3)
- Hot food takeaways (Sui Generis)
- Cold food takeaways which are classed as a shop (Class 1)
- Public houses and bars (Sui Generis)
- Class 7 uses (hotels and hostels) licensed or intending to be licensed for the sale of alcohol to persons other than residents or persons other than those consuming meals on the premises. i.e. with a public bar.

### It does not include:

- Class 7 uses (hotels and hostels) without a public bar.

## When is planning permission required?

Some food and drink uses do not require planning permission. Information on some common enquiries is given on this page.

## Changing a shop to Class 3 use or hot food takeaway

Planning permission is required for a change of use from a shop to a hot food takeaway or to a Class 3 use, such as a café or restaurant. Whether this change has, or will occur will be determined on a case by case basis. Regard will be given to:

- Concentration of such uses in the locality
- The scale of the activities and character and appearance of the property
- Other considerations are the impact on vitality and viability, the effect on amenity and potential road safety and parking problems.

## What should I do if it is permitted development?

If you believe planning permission is not required, you can apply for a [Certificate of Lawfulness](#) for legal confirmation.

## Selling cold food for consumption off the premises

Businesses selling cold food for consumption off the premises, such as sandwich bars, fall within Class 1 shop use. If the building is already in use as a shop then permission is not required.

Some secondary uses alongside the main uses also do not need permission; this is dependant on the scale of the activity.

Ancillary uses which are not likely to require planning permission in addition to a Class 1 shop use are:

- The sale of hot drinks
- The provision of microwaves, soup tureens and/or toasted sandwich machines.  
*Note: hotplates for the cooking of food will generally not be acceptable in a class 1 establishment*
- Seating constituting a very minor element to the overall use. The limit will vary according to the size and layout of the premises
- An appropriately sized café in a larger unit, such as a department store, if it is a relatively minor proportion of the overall floorspace and operates

primarily to service the shop's customers.

## What to consider if planning permission is required

### Policies Ret 9-11 Shops

Set out which locations a non-shop use is acceptable. These policies should be considered if a shop will be lost as part of the changes. In some areas of the City, the loss of a shop use will not be permitted. In other areas, certain criteria must be met.

### Policy Hou 7

sets out when uses will not be permitted in predominantly residential or mixed use areas.

### Policy Ret 11

Sets out when food and drink establishments will not be permitted.

## Restaurants, cafés, snack bars and other Class 3 Uses

Proposals will be supported in principle in the following locations:

- Throughout the Central Area
- In designated shopping centres
- In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

Proposals in predominantly housing areas will not normally be permitted.

### Hot Food Takeaways

With the exception of proposals within areas of restriction (shown on the next page), proposals will be supported in principle in the following locations:

- Throughout the city centre area as shown in the adopted Edinburgh Local Development Plan (LDP)
- In designated shopping centres as shown in the LDP
- In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

Proposals in the areas of restriction will only be accepted if there will be no adverse impact upon existing residential amenity caused by night-time activity. Where acceptable, this will normally be controlled through conditions restricting the hours of operation to 0800 to 2000.

Proposals in predominantly housing areas will not normally be permitted.

Where a restaurant's trade is primarily in-house dining but a minor element is take-away food then this still falls within the Class 3 use. Where take-away is a minor component of the business it will not require planning permission.

You can find out whether a site is located in the city centre area or a designated shopping centre through the online proposals map for the LDP, which can be accessed via the following link:

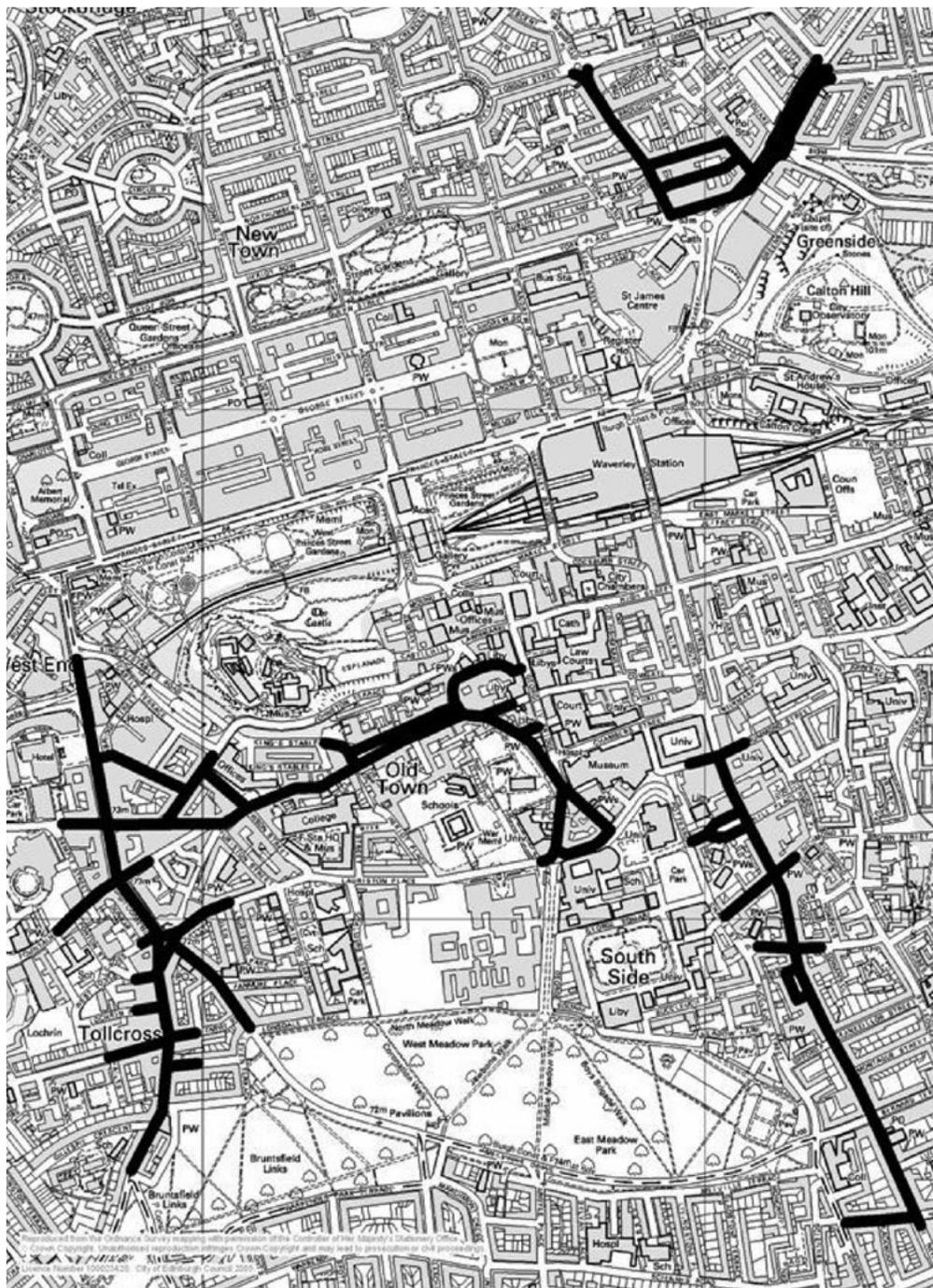
<https://edinburghcouncil.maps.arcgis.com/apps/webappviewer/index.html?id=d1e3d872be424df5b89469de72bbo3bd>

### Public houses, entertainment venues and hotels outwith Class 7 (Hotels and Hostels)

In all locations, these uses should be located so as not to impinge on residential surroundings. Accordingly, such developments, with the exception of public houses designed as part of a new build development, will not be allowed under or in the midst of housing<sup>1</sup>

There will be a presumption against new public houses and entertainment venues in the areas of restriction (shown on Page 10). Proposals for extensions to venues in the areas of restriction will only be accepted if there will be no adverse impact of the residential amenity caused by night time activity.

[1] "Under or in the midst of housing" means a) where there is existing residential property above the application site or premises; or b) where there is existing residential property immediately adjoining two or more sides of the building or curtilage comprising the application site. "Residential property" means dwelling houses, flats or houses in multiple occupancy and includes any vacant units.



Proposals in predominantly housing areas and residential side streets will not normally be permitted.

## Ventilation

If the use is acceptable in principle, establishments with cooking on the premises must satisfy ventilation requirements to ensure that they do not impinge on the amenity of the residential area or other neighbourhoods.

An effective system for the extraction and dispersal of cooking odours must be provided. Details of the system, including the design, size, location and finish should be submitted with any planning application. A report from a ventilation engineer may also be required where it is proposed to use an internal route in an existing building for ventilation ducting.

The ventilation system should be capable of achieving 30 air changes an hour and the cooking effluvia ducted to a suitable exhaust point to ensure no cooking odours escape or are exhausted into neighbouring premises.

Conditions shall be applied to ensure the installation of an effective system before any change of use is implemented, and/or the restriction of the form and means of cooking where necessary.

On a listed building or in a conservation area, the use of an internal flue should be explored before considering external options. The flue would need planning permission and listed building consent in its own right.

## Design

Any external duct should be painted to match the colour of the existing building to minimise its visual impact.

## Location

Ventilation systems should be located internally. Where this is not practicable, systems located to the rear may be considered.

## Noise

Conditions may be put in place to ensure that there is no increase in noise that will affect the amenity of the area.  
*The map identifies areas of restriction. These are areas of mixed but essentially residential character where there is a high concentration of hot food takeaways, public houses and entertainment venues.*

# Changing a Commercial Unit to Residential Use

## When is permission required?

Planning permission is required to convert a business to a house or flat. Permission will also be required for physical alterations to any external elevation. Listed building consent, where relevant, may also be required.

## What to consider if planning permission is required

### Protected shops

**Policies Ret 9-11**

set out when a non-shop use is acceptable. They should be considered if a shop will be lost as part of the changes.

In some areas of the city, the loss of a shop use will not be permitted. In other areas, certain criteria must be met. These policies should be considered for more information.

## Amenity

**Policy Hou 5**

Sets out the criteria to be met by proposals to convert to residential use.

Applications for a change of use will need to prove that the quality and size of accommodation created is satisfactory.

Units with insufficient daylight will be unacceptable; proposals should fully meet the council’s daylight requirements in the [Edinburgh Design Guidance](#). Basement apartments with substandard light will only be accepted where the remainder of the created unit represents a viable unit in its own right with regards to adequate daylight.

Dwelling sizes should meet the following minimum requirements and exceeding these standards is encouraged. Provision of cycle and waste storage is encouraged and may be required in some instances.

Number of Bedrooms	Minimum Gross Floor Area (sq m)
Studio	36
1 (2 persons)	52
2 (3 persons)	66
2 (4 persons)	81
3 (4 persons)	81
Larger Dwellings	91

## Design

**New designs should be of a high quality and respect their context**

- 1. Consider the architectural or historic merit of the shopfront and its context and identify an appropriate design from one of the following three basic approaches.**

### Retain the shopfront



*Henderson Street*

Retaining the existing shopfront and adapting it for residential use is a simple method of conversion and ensures the property fits well within its context. Where the shopfront is of architectural or historic merit this will be the only appropriate design.

A design which retains the shop front could be used in residential areas or within a row of shops.

### Simple contemporary design



*Royal Park Terrace*

Simple contemporary designs are often the most successful. The existing structural openings should be retained and any features of architectural or historic merit retained and restored. High quality materials should be used.

A simple contemporary design could be used in residential areas or within a row of shops.

### Residential appearance

Conversions with a residential appearance are rarely successfully achieved. Attention should be paid to structural openings, materials and detailing to ensure the new residential property does not stand out from its context.

Windows which are a version of those on the upper floors in terms of proportions, location and detail are usually most appropriate. Doors should relate to the scale of the building and should not result in a cluttered appearance.

Paint work should be removed to expose the stone or toned to match the building above.

A design with a residential appearance may be appropriate in residential areas but not within a row of shops.



### Consider the privacy of residents

To create privacy within the property, shutters or moveable screens behind the window could be considered as an alternative to frosted glass. Where considered acceptable, frosted glass should not occupy more than 50% of the height of the window. Retaining recessed doors also provides a degree of separation from the street. Metal gates could also be added.

# Altering a Shopfront

There should always be a presumption to improve, where possible, a poor shopfront.

## Understanding your shopfront

Policy Des 12 sets out the principles for altering a shopfront

### 1. Consider the period of the building and the style of the shopfront

Shopfronts come in many styles, reflecting the different periods of architecture in Edinburgh. Those of architectural merit or incorporating traditional features or proportions should be retained and restored.

### 2. Determine whether there are any original or important architectural features or proportions which need to be retained

The pilasters, fascia, cornice and stallriser form a frame around the window and should be retained. Recessed doorways, including tiling, should not be removed. Original proportions should be retained.



Pilasters



Cornice



Stallriser

### 3. Identify any inappropriate additions which should be removed

Large undivided areas of plate glass can be appropriate within a small shopfront, however over a larger area can appear like a gaping hole over which the upper storeys look unsupported.

Large deep fascia boards and other claddings should be removed and any original features reinstated.



Deep Fascia



Proportions



Cladding

### Good Example

At 37-41 Nicolson Street, Edinburgh, restoration work has been carried out to remove modern additions and unveil the original Victorian shopfront of 'McIntyre's Drapery Stores'. Architectural features, including the cornice, pilasters and glazing bars have been exposed. Views into the store have now been opened up and the shop is more noticeable in the street.



### Context

#### Shopfronts should be designed for their context

#### 1. Consider the relationship of the frontage to the rest of the street

The relationship of the frontage to the established street pattern should be considered, particularly in terms of fascia and stallriser height and general proportions. Alterations should preserve and strengthen the unity of the street.



One shopfront across two separate buildings will not normally be acceptable as it disrupts the vertical rhythm of the facades above.



## 2. Consider the relationship to features on the upper floors

Where units have a narrow frontage and vertical emphasis, they should retain their individual integrity, rather than attempting to achieve uniformity with adjoining properties.



## Good Examples



St Stephen Street



William Street



Grassmarket

## New Design

New designs should be of high quality and respect their surroundings

### 1. Identify the features or proportions which will need to be retained or restored

The pilasters and frame should be retained, even if the rest of the frontage is not of sufficient quality to merit retention.

Poorly designed fascias and pilasters do not make up a well composed frame. Pilasters should not be flat to the frontage and fascias should not exceed one-fifth of the overall frontage height or be taken over common staircases. Stallrisers should be in proportion to the frontage.

Cornice which continues from the adjacent frontages will require to be restored. No part of the frontage should be located above this.

### 2. Consider the design and materials to be used

Where a new frontage is considered appropriate, there is no particular correct style. Modern designs will be considered acceptable providing they incorporate high quality materials, are well proportioned, and retain any features of architectural merit.

Reproduction frontages should be based on sound historical precedent in terms of archival evidence or surviving features.

Appropriate spacing and cornice should be used to create a visual break between the frontage and the building above.

## Good Examples



Barclay Place



Bread Street

In general, natural and traditional materials, such as timber, stone, bronze, brick and render should be used. These should be locally sourced from renewable or recycled materials, wherever possible. Frontages clad in incongruous materials will not be acceptable.

## Paint and Colour

### When is permission required?

Planning permission, and where relevant listed building consent, will be required to paint a building which is listed or within a conservation area, including a change of colour.

Planning Permission will not be required to paint an unlisted building out with conservation areas. However the painting and colour of a building should reflect its character and the area.

## Good Example



Victoria Street

## Listed Buildings and Conservation Areas

### Paint

Unpainted stonework and other good quality materials should not be painted.

### Colour Schemes

The creation of a strong identify for a business must come second to an appropriate balance with the context. Colour schemes should clarify the architectural form and not apply alien treatments and design. The most successful are simply schemes which employ only one or two colours.

Muted or dark colours are preferable.

### Uniform Appearance

Coordinated paint schemes are encouraged and should be retained where present. In particular, common details, such as arches and pilasters, should have a uniform treatment. Similar lettering and signage should also be used.

The range of colours within a block should be limited.

## Security

### 1. Determine whether a security device is necessary and consider alternative solutions

Security devices should not harm the appearance of the building or street. Toughened glass or mesh grilles could be used as an alternative to security shutters.



### 2. If a device is considered acceptable, consider its location in relation to the window

Where shutters are not common within the immediate area, they should be housed internally, running behind the window.

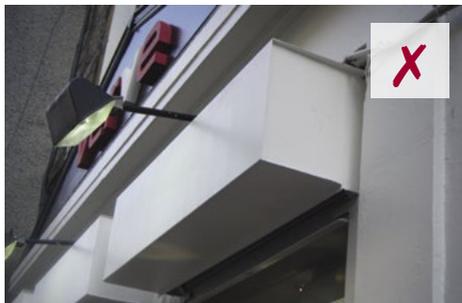
Elsewhere, shutters should be housed behind the fascia or a sub-fascia.

Shutters should not be housed within boxes which project from the front of the building.



### 3. Identify an appropriate shutter design

Solid roller shutters are unacceptable. They do not allow window shopping at night, the inability to view the inside of the shop can be a counter security measure and they tend to be a target for graffiti.

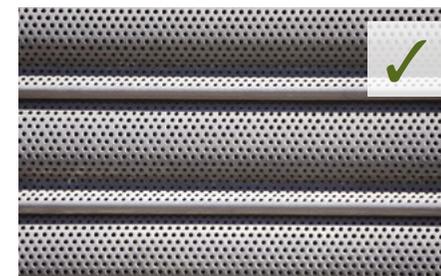


Roller shutters of the non-solid type may be acceptable in a perforated, lattice, brick bond or open weave pattern. Shutters made up of interlocking clear polycarbonate sheets running externally to the glass may also be acceptable.



Where there is evidence of early timber shutters, they should be restored to working order or replaced to match.

External roller shutters require planning permission.



### Listed Buildings and Conservation Areas

Externally mounted shutters will not be considered acceptable.

The most appropriate security method is toughened glass. Internal open lattice shutters or removable mesh grilles may also be acceptable.

Metal gates are most appropriate on recessed doors.

Shutters should be painted an appropriate colour, sympathetic to the rest of the frontage and immediate area.

## Blinds and Canopies

### 1. Consider whether a blind or canopy is appropriate on the building

Blinds and canopies should not harm the appearance of the building or street.

Traditional projecting roller blinds, of appropriate quality, form and materials, will be considered generally acceptable

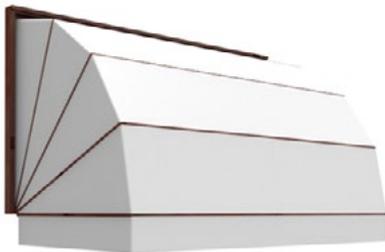
Dutch canopies will not be acceptable on traditional frontages where important architectural elements would be obscured.

### Listed Buildings and Conservation Areas

Dutch canopies will not be acceptable on listed buildings or in conservation areas.

Blinds and canopies will not be considered acceptable on domestic fronted buildings.

Solar glass and film are acceptable alternative methods of protecting premises from the sun, providing they are clear and uncoloured.



Dutch canopy

### 2. If acceptable, consider the location of the blind or canopy

Blinds and canopies should fold back into internal box housings, recessed within the frontage. They must not be visually obtrusive or untidy when retracted.



Boxes housing blinds and canopies that project from the building frontage will not be acceptable.

Blinds and canopies will not be acceptable above the ground floor level.



### 3. Determine an appropriate design and materials

Blinds and canopies must be made of high quality fabric. Shiny or high gloss materials in particular will not be supported.

An advert, including a company logo or name, on a blind or canopy will need advertisement consent.



Other works affecting or relating to a shopfront or other business which may require planning and/or listed building consent:

- Installation of garlands, particularly if they are supported by a structure
- Free standing advertisement fixtures, awnings, flagpoles and banners

Where permission is **required** these will generally not be acceptable.

## Automatic Teller Machines

### 1. Consider whether an ATM will be acceptable

ATMs should not impact upon the character of the building or area.

Free standing ATMs add to street clutter and will not be considered acceptable.

ATMs may be considered acceptable when integrated into a frontage, providing no features of architectural or historic interest will be affected and the materials and design are appropriate.

### 2. If acceptable, consider the location, design and access

Consideration should be given to pedestrian and road safety. Terminals should be sited to avoid pedestrian congestion at street corners and narrow pavements. The assessment of the impact on road safety will include any potential increase in the number of vehicles stopping, visibility and sightlines.

The use of steps for access to ATMs should be avoided and the units should be suitable for wheelchair access.

Where ATMs are removed, the frontage should be reinstated to match the original.

### Listed Buildings and Conservation Areas

Consideration should first be given to locating the ATM internally. For guidance on internal alterations, consider the Listed Buildings and Conservation Area guidance.

Externally, ATMs should be located in a concealed position on the façade, within an inner vestibule or on a side elevation.

ATMs should not be fitted to finely detailed façades or shopfronts of historic or architectural merit. They will not be acceptable where stone frontages, architectural features or symmetry will be disturbed. New slappings (knocking a hole through a wall to form an opening for a door, window etc) will be discouraged.

Only one ATM will be allowed on the exterior of any building.

Where acceptable, the ATM should not be surrounded by coloured panels or other devices and signage should not be erected. The ATM and any steps or railings, where necessary, should be formed in high quality materials and be appropriate to the area. Surrounding space should match the façade in material and design.

### Permissions Required

ATMs which materially affect the external appearance of a building require planning permission. Listed building consent may also be required for an ATM on a listed building. In addition, advertisement consent may be required for any additional signage.

### Air Conditioning and Refrigeration

#### Location

Air conditioning and refrigeration units should not be located on the front elevation or any other conspicuous elevations of buildings, including roofs and the flat roofs of projecting frontages.

It will normally be acceptable to fix units to the rear wall. These should be located as low as possible.

### Design

Units should be limited in number, as small as practicably possible and painted to tone with the surrounding stonework or background.

### Listed Buildings and Conservation Areas

The preferred location for units on listed buildings and within conservation areas are:

- standing within garden or courtyard areas (subject to appropriate screening and discreet ducting)
- Within rear basement areas
- Inconspicuous locations on the roof (within roof valleys or adjacent to existing plant). However, in the New Town Conservation Area and World Heritage Site, aerial views will also be considered.
- Internally behind louvers on inconspicuous elevations. This should not result in the loss of original windows.

Where it is not practicably possible to locate units in any of the above locations, it may be acceptable to fix units to the wall of an inconspicuous elevation, as low down as possible.

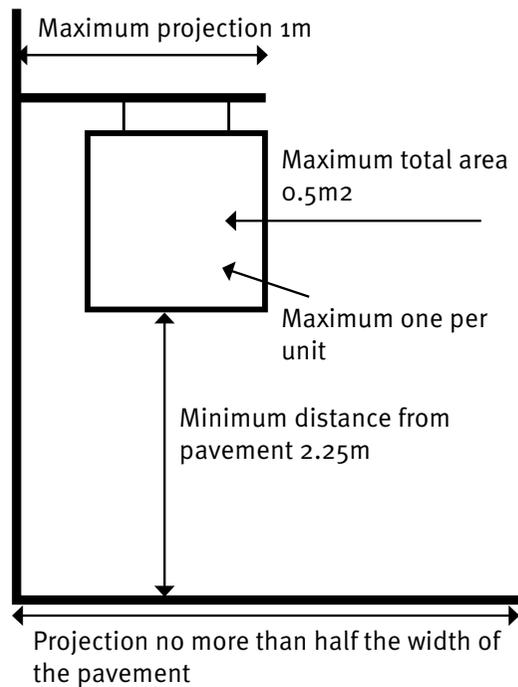
Units should be limited in number, as small as practicably possible and painted to tone with the surrounding stonework or background.

Ducting must not detract from the character of the building.

# Signage and Advertisements

## 1. Consider the scale, location and materials of the advertisement and any lettering

High level signage is not normally considered acceptable.



NB. Dimensions may be reduced for smaller frontages

## Projecting and Hanging Signs

Traditional timber designs are most appropriate on traditional frontages.



## Fascia

Box fascia signs applied to existing fascias are not considered acceptable.

Individual lettering should not exceed more than two thirds the depth of the fascia, up to a maximum of 450mm.

## Princes Street

Projecting signs and banners will not be supported. Illumination must be white and static.

## Listed Buildings, Conservation Areas and Royal Mile

Signage obscuring architectural details is not acceptable.

Signage should be timber, etched glass or stainless steel; synthetic materials are not appropriate.

Signage should harmonise with the colour of the shopfront.

Applied fascia boards/panels will not normally be acceptable. Lettering shall be applied directly onto the original fascia. If there is an existing applied fascia board/panel in place, this should a) be removed and the original fascia restored, or b) an appropriate new fascia applied but only where there is no original fascia.

Letters must be individual and hand painted.

On buildings of domestic character, lettering or projecting signs are not acceptable. Guidance on alternative signage is given on the next page.

In the Royal Mile area of Special Control, there are additional controls on advertisements.

## 2. Consider an appropriate method of illumination

External illumination will only be acceptable if unobtrusive.

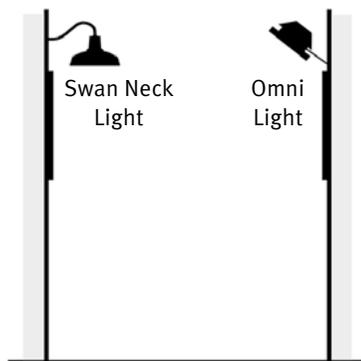
Individual letters should be internally or halo lit. Discreet spotlights painted out to match the backing material or fibre optic lighting may also be acceptable. Illumination must be static and no electrical wiring should be visible from outside of the premises. White illumination is preferable.

Projecting signs should only be illuminated by concealed trough lights.

LED strip lighting to illuminate signage may be acceptable where it can be positioned discreetly on the shop front.

### Listed Buildings and Conservation Areas

Swan neck lights, omni-lights on long arms or trough lights along the fascia will not normally be acceptable. Letters should be halo or internally lit.



## 3. Consider alternative advertisements

### Internal Advertisements

Advertisements behind the glass should be kept to a minimum to allow maximum visibility into the premises.



### Directional Signs/ Temporary On-Street Advertising / A boards

Advance directional signs outwith the curtilage of the premises to which they relate (including 'A boards' and other temporary on-street advertising) will not be permitted.

### Guest Houses

Houses in residential use (Class 9) but with guest house operations should not display signs, except for an official tourism plaque or a window sticker.

For properties operating solely as a guest house (Class 7), any pole signs located in front gardens should not exceed 0.5sq metres in area.

### Listed Buildings and Conservation Areas

#### Basement properties

Basement properties may be identified by a name plate or modest sign on the railings, or where they don't exist, discreet and well designed pole mounted signs may be acceptable.



#### Buildings of domestic character

On buildings of domestic character, identification should consist of a brass or bronze nameplate, smaller than one stone. Where the building is in hotel use, consideration will be given to painted lettering on the fanlight or a modest sign on the railings.

# Cycle Storage

Commercial buildings which operate under class 4, 5 or 6 of the use classes order\* have permitted development rights to erect a structure for the purpose of the temporary storage of pedal cycles, provided that the following criteria are met:

- The structure will not be sited within the curtilage of a listed building
- If the site is located in a conservation area, the structure will be located within the front curtilage of the commercial building
- The structure will not obstruct the clear line of sight of a road or footpath by the driver of a vehicle entering or leaving the commercial building (a driver's view of pedestrians and drivers on the footpath and road next to the building should not be worsened as a result of the structure being erected)
- The structure would create an obstruction to light to another building

To get written confirmation that you do not require planning permission you can apply for a Certificate of Lawfulness. You can do this online and you will get a decision from us on whether permission is required. This certificate can be used to confirm you do not need permission. It can also be useful should you decide to sell or rent the premises, or if you are asked if you have permission for ancillary buildings.

Note: The planning authority will not provide informal opinions as to whether a building will obstruct either the clear sight of a driver, or light to another building. If you wish to seek clarification as to whether your proposal complies with these requirements in order to be considered permitted development, a certificate of lawfulness must be applied for.

## \* Use classes order

### Class 4 - Business use

- As an office, other than a use within class 2 (financial, professional and other services)
- For research and development of products or processes
- For any industrial process

Being a use which can be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

### Class 5 - General Industrial

Use for the carrying on of an industrial process other than one falling within class 4 (business)

### Class 6 - Storage or distribution

Use for storage or as a distribution centre





HAPPY TO TRANSLATE

ترجمے کے لئے حاضر آماندوں کے ساتھ انوباد کررر

يسعدنا توفير الترجمة MOŻEMY PRZETŁUMACZYĆ 很樂意翻譯

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## Appendices

The following documents are referred to in this Grounds for Review Statement.

All such documents have been electronically uploaded to the ePlanning.Scot online portal.

**Document 01** – Decision Notice Application Ref: 22/02836/FUL dated 24.10.22

**Document 02** – Report of Handling of Planning Application 22/02836/FUL

**Document 03** – Minute of Local Review Body meeting 13<sup>th</sup> October 2021 for planning reference 19/04799/FUL

**Document 04** – Resturant Licence Approval by CEC with Premises Floorplan showing approved outdoor seating plan

**Document 05** – Decision Notice for previously refused planning application 19/04799/FUL December 2019

**Document 06** – Google Aerial Photo image taken 2012 showing outdoor street area with enclosed seating

**Document 07** – City of Edinburgh Council's Non- Statutory Guidance for Business 2021

**Document 08** – Environmental Protection consultation response to planning application 22/02836/FUL

Full Planning application drawings and sections, application form, landowner certification all as submitted for planning approval.

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## 1 INTRODUCTION

### THE PROPOSED DEVELOPMENT AND REASONS FOR REFUSAL

- 1.1 These are Grounds for Review of a decision by City of Edinburgh Council planning officer to refuse plans to install a new decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting at 1 Commercial Street, Edinburgh EH6 6JA.
- 1.2 The Review request is submitted under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended 2006). The Notice of Review has been lodged within the prescribed three-month period from the refusal of planning permission reference 22/02836/FUL dated 24<sup>th</sup> October 2022 (**Document 01**).
- 1.3 By Delegated Powers, the Chief Planning Officer (PLACE) of The City of Edinburgh Council decided to refuse the application, as recommended by a Planning Officer in the Report of Handling (**Document 02**). The two reasons for refusal are per the Decision Notice (**Document 01**), which state:
1. *The proposal is contrary to LDP Policy Env 6 and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The does not preserve or enhance the character and appearance of the Leith Conservation Area.*
  2. *The proposal is contrary to LDP Policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.*
- 1.4 Please note Reason 1 as written in the Decision Notice has a typing error. The second sentence may be read instead as “The {Proposal} does not preserve or enhance the character and appearance of the Leith Conservation Area”

### PROPOSED PROCEDURE TO BE FOLLOWED IN DECIDING THE REVIEW

- 1.5 We recommend two procedures - a site visit (accompanied) with further written representations to be followed by the Local Review Body in deciding the case.
- 1.6 With respect to the two reasons for refusal, visual inspection of the appeal site is necessary to confirm that the appeal proposal will not have a detrimental impact on the character and appearance of the Conservation Area. Visual inspection will confirm the position and context for neighbouring residents where it is alleged the proposal would have a detrimental impact on their amenity.

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## 2 THE APPEAL SITE AND PROPOSALS

- 2.1 Full details of the planning application site, detailed site layout, technical land use considerations are contained in the planning application.
- 2.2 Please note this is a re-submitted improved proposal on previous proposals for a decking and outdoor seating.
- 2.3 This new proposal has come forward since a recent planning history provoked enforcement action by City of Edinburgh Council for the unlawful erection of a decking area with tables, chairs, planters and perspex screens (ref 19/00708/EOPDEV). Following refusal of a planning application submitted retrospectively for the development described (ref 19/04799/FUL) on 6th December 2019, the owners appealed the decision. The appeal was subsequently upheld by the Council's Local Review Body on 13<sup>th</sup> October 2021. The City of Edinburgh Council then enforced the unlawful development with the issue of Enforcement Notice on 13th December 2021. The owners appealed the terms of the Enforcement Notice to Scottish Ministers, which was dismissed on 11th March 2022.
- 2.4 The above sequence of events resulted with the owners' complying with the terms of the Enforcement Notice 19/00708/EOPDEV issued by City of Edinburgh Council, whereby all decking, tables, chairs, parasols, planters and perspex screens were removed from the site and the site returned to its previous condition, earlier this year.
- 2.5 The appellants then submitted a new planning application (reference 22/02836/FUL) which is subject to this appeal.
- 2.6 The new planning application presented considerable improvements to the quality and appearance of the proposed decking and outdoor seating arrangements. We will explain in the Grounds of Review Section 3 of this Statement the reasons why the appellants are aggrieved at the decision to refuse this new planning application given the considerable improvements presented.
- 2.7 The appeal site is an external area located to the front of the long-established restaurant business at 1 Constitution Street – currently known as 'Hemingways'. It has been operated since 2017 by Metro Inns Ltd (Margherita Restaurants) and until then previously known as 'Giulianos on the Shore' (operated by the Giuliano family). A restaurant use has operated here for over 40 years. The property is a lease from Star Bars and includes up to 10 car parking spaces, which is where the outdoor decking and seating area is proposed to be situated.
- 2.8 The appeal site lies in the Leith Conservation Area, and situated on a cobbled section of Commercial Wharf. The proposed structures would not be attached to the existing building housing the restaurant (within the ground floor of a Grade B-Listed Building). The property stands on the corner of Commercial Street and Commercial Wharf which is a cul-de-sac leading to a converted warehouse to the immediate south.
- 2.9 The decking area would house tables and chairs for customers, parasols with 4m covers and planters as sound diffusers. The decking would be finished in treated timber, with portable planters formed of Perspex. The appeal proposals sought to continue the tradition of outdoor

seating which was started by Giulianos, over 30-years ago, through minor improvements to the design.

- 2.10 The appellants engaged with a new architect and their brief was specifically tailored to responding to the previous concerns of the planning authority with respect to appearance and finishes to be more in keeping with the character and amenity of the conservation area.
- 2.11 The appeal is for a much improved proposal (on previous designs and materials) where more thoughtful attention had been given to an improved design, use of higher quality materials and finishes. As it is argued in this Appeal, the new plans address the previous concerns of the planning authority raised during determination of the previous scheme and address the reasons for the subsequent enforcement action which was progressed.

### **BACKGROUND TO PROPOSAL FOR EXTERNAL AREA FOR SEATING**

- 2.12 The appellants are seeking to extend the tradition of outdoor seating provided to customers, since the previous occupants (Giulianos) were housed here from 2005-2017. Giuliano's started the outdoor seating tradition over 30-years ago.
- 2.13 **Document 04** shows the City of Edinburgh Council Licencing Board approved an application by Giuliano's (approved 2016). The application reports the Licence previously commenced in September 2009 and described as "Premium Dining Public House & Resturant". The Licence condition is also relevant to this appeal, it states "*All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises*". The appended site plan to the Licencing Board approval found last page of the Licence **Document 04** shows the premises floor plan and seating area externally clearly indicated. The drawing is stamped approved by City of Edinburgh Council Licencing Board of 30.03.09 relative to the premises Licence No. 08/11947. We will return to the significance of Document 05 in relation to the planning appeal, as it clearly shows the premises licence permits outdoor seating since 2009 some ten years prior to the Council's planning authority taking enforcement action which has led to the planning application subject to this planning appeal.
- 2.14 Giuliano's established outdoor seating with tables and chairs placed on the cobbles, for over 30 years. The City of Edinburgh Council's Licencing Board approved outdoor drinking in the above permits. There have been no reported issues of the licensees breaching the licence conditions for the premises (i.e. all amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises).
- 2.15 When the new occupants, Margherita Restaurants took assignation of the lease in 2017, they reviewed the suitability (and safety) of the established outdoor seating area and decided to improve conditions given the situation on the cobbled street (which also runs steeply), might one day result in injury to customers or members of the public. The proposal for a deck along with screening provided by the planters is intended to remedy the potential risk to safety by creating a level, flat surface instead of the cobbled area. The planters would provide screening and beautification through flowers and plants arranged around the deck.

### 3 GROUNDS FOR REVIEW

3.1 Section 1 outlined the Planning Authority's two reasons for refusal

3.2 Based on the evidence presented in this appeal, the appellant contends both these reasons can be set aside, and planning permission should be granted for the proposed development. This is subject to the imposition of relevant, enforceable planning conditions.

3.3 This section will argue the following Grounds:

1. The proposal is acceptable in principle as there has been 30 years of external seating at this established restaurant and bar premises. This is evidenced by previous tenants' documents, aerial photography and the City of Edinburgh Council's Licencing Board approval of Licence of 2009 and again of 2016 - see appeal **Documents 04, 05 and 06**. See background Section 2.7 explaining the longevity of the premises use and external seating arrangements. The proposal is therefore acceptable in principle.
2. The character and appearance of the Leith Conservation Area will not be damaged – it will not affect a need to preserve or enhance the conservation area given the small-scale nature of the raised decking proposal. The appeal proposals are considerable improvement in terms of quality of materials and finish compared with the previous refused scheme. The proposed outdoor seating is a small addition to the established restaurant business with limited impact on the conservation area, so not contrary to LDP Policy Env 6.
3. The proposal is not contrary to the Council's Non-Statutory Guidance for Business 2019. The use of the space and the siting of the furniture associated with the space (which is of better and higher quality than previous proposals) does not have a detrimental impact on the character and appearance of the Leith Conservation Area.
4. The appellants demonstrate that never before has there been any complaint of noise from nearby residential premises, therefore the licensee has never before breached the City of Edinburgh Council Licencing Board licence that all amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises (See **Document 04**). The proposal includes mitigation measure (Perspex planters) to reduce any further risk of audible noise impacting on residential amenity. The proposal is not contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has not before and does not (through virtue of the mitigation proposed) pose any risk to amenity of neighbouring residents.

3.4 Underpinning all of these Grounds above is the further evidence of improvement to the proposals in terms of attention and care paid to the new proposals on previous proposals in terms of appropriateness of design and high quality of materials and finishes. These are considerable improvements on the previous scheme and demonstrate the applicant's resolve to produce a development of high quality compatible with the conservation area setting.

3.5 Each of these points is expanded in the paragraphs below, with evidence presented and justification given to support the appellants case that planning permission should be granted.

---

## **1 – CHARACTER AND APPEARANCE OF LEITH CONSERVATION AREA (SMALL SCALE NATURE OF DECKING PROPOSAL)**

- 3.6 The reason for refusal states the proposed development would not preserve or enhance the character and appearance of Leith Conservation Area and is contrary to LDP Policy Env 6.
- 3.7 Policy Env 6 permits proposals which meets three criteria – that the proposal preserves or enhances the special character and is consistent with the relevant conservation area character appraisal. Preserves trees, boundaries, paving or other features that contribute positively to the character of the area, and demonstrates high standards of design and uses material appropriate to the historic environment.
- 3.8 The proposals preserve the Leith Conservation Area, as no building will be harmed, and none of the surrounding places will be affected. The proposals are for a relatively small-scale raised decking – proportionate to the surrounding area. There are several examples of outdoor furniture along the Shore at Leith – seats, tables and parasols. These several examples are part of the character and make consistency of this part of the Leith Conservation Area – they are all associated with leisure and tourism experiences for people to spend longer in the area.
- 3.9 There are several examples in the Shore area nearby, of a mixture of design of the tables and chairs – for instance stainless steel effect chairs, stacked chairs, wooden fencing and planters. The example street view shot below is “Malt and Hops” bar on The Shore lying opposite to the appeal site, on outdoor paving on a busy through street. The appeal site is on a quite cul de sac street by comparison. The figures overleaf demonstrate the variety.



The figure above shows closer detail of the on-street tables and chairs at a property opposite the appeal site. Shows the broad variety of materials, finishes and types of furniture in the conservation area.

- 3.10 The scale of decking proposed will not encroach into neighbouring premises space, nor onto the public highway. At 4.6m by 14m, 64 sq m is a very small proportion of the public amenity space along The Shore and the waterfront.
- 3.11 It is noted the non-statutory Guidance for Businesses advises that proposals should be architecturally compatible in design, scale and materials with the character of the conservation area.
- 3.12 This appeal emphasizes the greater attention and care paid to improving the quality and appearance of the new outdoor seating area over previous proposals. The applicant instructed a new architect and brief to review the previous proposals and to tailor the design, finish and use of materials to a maritime theme and to present detailing which would raise the quality and thus be more appropriate to the character and setting of the conservation area.
- 3.13 The appellants have taken cognisance of the advice given by Local Review Body when deciding on the previous proposals (reference 19/04799/FUL). As read in the **Appeal Document 03**, a minute of the Local Review Body meeting of Thursday 30 September 2021. Specifically the minute refers in the Conclusions section at page 2 and 3 the following comments to which the appellant makes these direct responses in the new proposals:

*“Whether the colour of the planters was appropriate”*

- 3.14 **The new proposal has switched from a bright purple paint colour of planters, to a much more subtle colour and finish of oak clad barrels as planter material and finish.**

*“That the decking had an unsightly appearance”*

*“That the materials used were not of a high enough quality to have in a conservation area”*

- 3.15 **The new proposal is based on a maritime theme which is applied to all aspects of the appearance of the seating area – this includes a blackened steel sheet, oak barrel cladding, brass nautical lights and a sail white branded parasol.**

- 3.16 It is argued that the contrast in terms of quality of finish and use of materials from the previous to the new scheme is considerable improvement on appearance. The use of blend of colours in black, oak, brass and white combine to be less obtrusive and better integrated with the surrounding buildings colours and finishes. The seating area is therefore of a much improved appearance than previous.

*“That the impact on the conservation area was concerning”*

- 3.17 The impact on the conservation area is much less concerning as a result of the significant improvements to materials, finish and detailing. However it is concerning to the appellant that the planning officer handling the appeal case paid little regard to any comparison or contrast against previously refused plans whereby it would have been evident to the officer that the new scheme is a considerable improvement and less significant impact on the conservation area. **Appeal Document 02** (officer report of handling) there is no assessment and no justification or reasoning given to how or why the officer came to an abrupt conclusion that the proposal *“does not have regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is not acceptable with regards to Section*

64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997". The planning officer has provided no response to the proposals in any detail or reflection on previous proposals.

- 3.18 Based on all of these points above, it is contended that the proposal's nature and scale, and potential for removal or replacement (based upon the choice of materials and design) means the development is not of harm to the Conservation Area and does not detract from the streetscape. The proposal is not contrary to LDP Policy Env 6.

## 2 - NON STATUTORY GUIDANCE FOR BUSINESS (USE OF THE SPACE)

- 3.19 The Edinburgh Non-Statutory Guidance for Business is cited by the planning authority of not being complied with in the appeal proposals. The Planning Officer's Report of Handling (**Document 02**) does not consider the document in any detail, and therefore it is difficult to fully understand why, in the officers' view, the proposals do not comply with this Guidance.
- 3.20 The appellants contend that the proposal for raised decking and planters does comply with the Guidance for Business, (see **Document 07**), for the following reasons:
- 3.21 It is noted the Guidance for Business requests occupants of premises to obtain "tables and chairs permits" if the business sells food and drink. The appellants refer to the appeal **Document 04**, the City of Edinburgh Council Licencing Board approval for the sale of food and drink from the premises. The site floor plan attached to the Licence approved in 2009 and renewed in 2016 shows the outside table and chairs area showing clearly 2no. picnic type tables. This is historical and the appeal development proposal was intended to improve and make safer the outside seating area through the development of a raised deck to make the cobbled surface more even and welcoming for customers.
- 3.22 The Guidance refers to advice about extension to food and drink uses, at Page 9. It states; "*Proposals for extensions to venues in the areas of restriction (i.e. within the midst of housing) will only be accepted if there will be no adverse impact of the residential amenity caused by night time activity.* However, **Document 04** clearly shows the appellant's Licence to operate the premises for food and drink, its only restriction is on keeping noise inaudible around surrounding residential properties. We comment on residential amenity below.

## 3- NEARBY RESIDENTIAL AMENITY

- 3.23 The 2<sup>nd</sup> reason for refusal in the Decision Notice claims that the proposal is unacceptable because it would have a detrimental impact on nearby residents. It is alleged this would make the proposal contrary to Policy Hou 7 of the LDP.
- 3.24 Policy Hou 7 states that developments, including changes of use, which will have a materially detrimental effect on living conditions of nearby residents will not be permitted. As has been stated before, and supported by the Licencing evidence, the proprietors before the appellant (Giuilanos) and the current (Margherita Restaurants) have never received complaint from nearby residents nor any formal action from the Environmental Health authority about noises or disturbances to surrounding residential occupants.

3.25 Appeal **Document 03** (the minute of the Local Review Body decision of 30 September 2021 on the previous case at this site) in the conclusions section noted “*That it was understood why the appellant would wish to encourage patrons to the water of Leith area*” and “*That the outside use was appropriate during Covid*”. Both of these comments of the Local Review Body indicate that there is awareness of the balance that needs to be struck between enabling businesses to operate and grow custom (in today’s economic climate more than ever) along with protecting the amenity of nearby residents. The evidence of no complaints recorded by Environmental Protection, along with the same department’s consultation response to the appeal proposal (Appeal **Document 08**) states:

*“Environmental Protection has no complaints of noise on record for the duration of use of the dining and drinking area”*

*“The nearest residential properties with a line of sight to the external dining area are situated around 70 metres away across the Water of Leith at the Shore so there is a low level of likelihood that noise will impact upon the amenity of those properties”*

*“The application proposes to increase the size of the dining and drinking area although in terms of noise production, the increase is unlikely to significantly generate more noise from that which can already occur”*

3.26 It is acknowledge the proposal involves the active utilisation of an outdoor area for customers to eat and drink in. However this practice has been ongoing for over 30-years, and tables and chairs formed from at least 2012 and 2016.

3.27 The appellants are particularly concerned that the planning officer has misunderstood the nature of the long-established business as the Licence describes as a “Premium Dining Public House & Resturant” (**Document 04**). The proprietors have had signs in place within the premises and external on the entrance door to remind visitors to respect residential amenity and to keep noise controlled. Therefore the additional measure of sound diffusers formed as planters, is a further enhancement to the development to respect the surrounding character and comply with Policy Hou 7. The proposal does not have a detrimental impact on the amenity of neighbouring residents and does comply with LDP Policy Hou 7.

## 4 CONCLUSIONS

4.1 This Grounds for Review statement sets out the appellants case, that the 2 reasons for refusal can be set aside, and planning permission should be granted. This is because:

- The premises have been operating as a “Premium Dining Public House & Resturant” per the City of Edinburgh Council Licencing Board licence conferred in 2009 and renewed in 2016 (**Document 04**). The Licence allows for eating and drinking and approved the attached seating plan with the Licence (**Document 04** last page). That seating plan shows clearly the presence of external seating on the appeal site, from as early as 2009.
- The previous proprietors (Giuliano’s) have confirmed, for over 30-years, they have served customers outdoors on tables and seating. The appellants want to continue that tradition.
- The appeal site conditions of cobbles was recognised as a potential safety risk to the proprietor’s customers, so the proposed raised decking is a design response to improve the surface and make it more safe and welcoming.
- The raised decking area is not of excessive scale or nature, rather it is confined to the area immediately outside of the premises. The scale and nature is therefore unlikely to detrimentally impact on the character of the area within the wider context of the conservation area designation. There are shown to be several other examples of outdoor seating and tables in locations that are less well sited as demonstrated in this appeal.
- The raised decking is not a permanent structure (i.e. not fixed to building), so can be removed, replaced or stored. This is the intention of the appellants, during any period out of season for instance, or for maintenance or repair purposes to ease replacement and make the operation cost-effective. Should the appeal be allowed, then a suitable planning condition to enforce control over the period of use, its removal or storage, of the raised decking and the planters’ position on the area can be discussed with the planning authority.
- Since the last proposal, this new proposal is a considerable improvement on the quality and finish and choice of materials. The appellants took great care to review the advice given in the Local Review Body’s comments and has taken these on in terms of the quality of materials and design of the outdoor seating area.
- The new choice of materials is designed to match the area’s maritime heritage; uses blended colours matching surrounding properties and removes any bright colouring.
- The proposal for Perspex planters to diffuse noise, is not because the proprietors anticipate a noisy outdoor seating arrangement – as this has not been the case for the 30 years it has been practiced, but rather it is to comply with and meet the proprietors Licencing Board conditions to reduce noise on the surrounding residential area.
- **The proposals are therefore not detrimental to the conservation area or the character of the streetscape, so are not contrary to LDP Policy Env 6.**
- We do refer to the support the proposed additional street furniture would have under LDP Policy Des 3 which supports well-designed additions - in this case the reason for the addition to the outdoor seating area is to protect visitors from risk of injury over the cobbled street, and to provide a more even surface.
- **The proposals will not detrimentally impact on nearby and surrounding residential amenity.** There have been no complaints of disturbance from the premises outdoor or indoor use, for over 30 years, and referring to the Council’s Licence Board approval of 2009 and renewal of 2016 (**Document 04**), Environmental Protection do not object and their consultation response is clear in that no harm is anticipated to surrounding residential amenity (**Appeal Document 08**). The installation of proposed planters as noise diffusers is

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intended to strengthen mitigation against any noise and thus protect residential amenity. **As such the proposal complies with LDP Policy Hou 7.**

4.2 It is respectfully requested therefore that the Local Review Body reconsider the proposals and find favour with the arguments set out in this Review and grant planning permission.

# Hemingways



## Leith's Whisky Heritage

Leith has played a pivotal part in Scotland's whisky heritage. From the 16th century, it became a centre for the storage of wine and brandy, with as many as 100 bonded warehouses at its height. Whisky followed on when in 1822, Leith was granted one of only six licences issued to ports in Scotland allowing them to store whisky under bond. At the time, whisky was seen as a poor man's drink, with wine and brandy the premium tipples. In the late 19th Century, the tables turned.



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<p><b>Drawing Status</b> PLANNING</p> <p><b>Project</b> Hemingways Bar Leith</p> <p><b>External Seating</b></p>	<p><b>Drawing Title</b> Leith Heritage Image</p> <table border="1"> <thead> <tr> <th>Scale</th> <th>Size</th> <th>Drawn</th> <th>Checked</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>1:200</td> <td>A1</td> <td>DB</td> <td>—</td> <td>14/04/2022</td> </tr> </tbody> </table> <p><b>Drawing No</b> 790 G1 XX XX DR A PL01</p>	Scale	Size	Drawn	Checked	Date	1:200	A1	DB	—	14/04/2022
Scale	Size	Drawn	Checked	Date							
1:200	A1	DB	—	14/04/2022							

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## LICENSING BOARD

## Premises Licence

Issued by The City of Edinburgh Licensing Board under the terms and conditions  
of the Licensing (Scotland) Act 2005

Premises licence number	08/11947
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Date of commencement of licence	1 September 2009
---------------------------------	------------------

Postal address of premises
----------------------------

1 Commercial Street Edinburgh
----------------------------------

Postcode EH6 6JA
------------------

Telephone number
------------------

Description of premises
-------------------------

Premium Dining Public House & Restaurant
--

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## LICENSING BOARD

Licensed hours		
	On Sale	Off Sale
Monday	11:00 to 01:00	11:00 to 22:00
Tuesday	11:00 to 01:00	11:00 to 22:00
Wednesday	11:00 to 01:00	11:00 to 22:00
Thursday	11:00 to 01:00	11:00 to 22:00
Friday	11:00 to 01:00	11:00 to 22:00
Saturday	11:00 to 01:00	11:00 to 22:00
Sunday	12:30 to 01:00	12:30 to 22:00

Name and postal address (or registered address if a company), telephone number and email (where relevant) of holder of premises licence

Punch Partnerships (PTL) Limited  
Elsley Court  
20-22 Great Titchfield Street  
London  
W1W 8BE

Registered number of premises licence holder, e.g. company number, charity number (where applicable)

03512363

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## LICENSING BOARD

**Name, postal address and telephone number of premises manager named in the operating plan**

Ms Carol Ann Lawrie  
1f3  
175 Gorgie Road  
Edinburgh  
EH11 1TJ

0131 623 6700

**Number of the personal licence held by the premises manager named in the operating plan and the name of the issuing Licensing Board**

Premises Manager number : 14/02861

Issuing Licensing Board: City of Edinburgh

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## LICENSING BOARD

### Licence Conditions

The mandatory conditions set out in schedule 3 to the Licensing (Scotland) Act 2005 will apply.

The following local conditions will also apply:-

[1. All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises]

## OPERATING PLAN

Licensing (Scotland) Act 2005, section 20(2)(b)(i)

### Question 1

STATEMENT REGARDING ALCOHOL BEING SOLD ON PREMISES/OFF PREMISES OR BOTH

<i>1(a) Will alcohol be sold for consumption solely ON the premises?</i>	<b>NO</b>
<i>1(b) Will alcohol be sold for consumption solely OFF the premises?</i>	<b>NO</b>
<i>1(c) Will alcohol be sold for consumption both ON and OFF the premises?</i>	<b>YES</b>
<i>*Delete as appropriate</i>	

### Question 2

STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION ON PREMISES

<i>Day</i>	<i>ON Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>	11AM	1AM
<i>Tuesday</i>	11AM	1AM
<i>Wednesday</i>	11AM	1AM
<i>Thursday</i>	11AM	1AM
<i>Friday</i>	11AM	1AM
<i>Saturday</i>	11AM	1AM
<i>Sunday</i>	12.30PM	1AM

**Question 3**

**STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION OFF PREMISES**

<i>Day</i>	<i>OFF Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>	11AM	10PM
<i>Tuesday</i>	11AM	10PM
<i>Wednesday</i>	11AM	10PM
<i>Thursday</i>	11AM	10PM
<i>Friday</i>	11AM	10PM
<i>Saturday</i>	11AM	10PM
<i>Sunday</i>	12.30PM	10PM

**Question 4**

**SEASONAL VARIATIONS**

<i>Does the applicant intend to operate according to seasonal demand</i>	<b>YES</b>
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*\*If YES – provide details*

To benefit from the annual extensions determined by the Licensing Board for the sale of alcohol for consumption on the premises during the Edinburgh Festival and festive period, in line with existing permissions.

**Question 5**

PLEASE INDICATE THE OTHER ACTIVITIES OR SERVICES THAT WILL BE PROVIDED ON THE PREMISES IN ADDITION TO SUPPLY OF ALCOHOL

COL. 1 5(a) Activity	COL. 2 Please confirm YES/NO	COL. 3 To be provided during core licensed hours – please confirm YES/NO	COL. 4 Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Accommodation	NO	N/A	N/A
Conference facilities	YES	YES	YES
Restaurant facilities	YES	YES	YES
Bar meals	YES	YES	NO
5(b) Activity Social functions including:	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Receptions including Weddings, funerals, birthdays, retirements etc.	YES	YES	YES
Club or other group meetings etc.	YES	YES	YES
5(c) Activity Entertainment including:	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Recorded music – see 5(g)	YES	YES	YES
Live performances – see 5(g)	YES	YES	NO
Dance facilities	YES	YES	NO

<i>Theatre</i>	YES	YES	NO
<i>Films</i>	YES	YES	NO
<i>Gaming</i>	YES	YES	NO
<i>Indoor/outdoor sports</i>	NO	YES	NO
<i>Televised sport</i>	YES	YES	YES
<b>5(d)</b> <i>Activity</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Outdoor drinking facilities</i>	YES	YES	YES
<b>5(e)</b> <i>Activity</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Adult entertainment</i>	NO	NO	NO

*Where you have answered YES in respect of any entry in column 4 above, please provide further details below.*

The activity/activities &/or service will cease 30 minutes after the terminal hour for the sale of alcohol (where alcohol is being consumed with a meal).

Activities/services may continue during the extended hours sought in Question 4 above.

*5(f) any other activities*

*If you propose to provide any activities other than those listed in 5(a) – (e) please provide details or further information in the box below.*

*Karaoke, charity casino night during core hours and any seasonal variation hours.*

5(g) Late night premises opening after 1.00am

Where you have confirmed that you are providing live or recorded music, will the decibel level exceed 85dB?	NO
When fully occupied, are there likely to be more customers standing than seated?	NO
*Delete as appropriate	

**Question 6 (On-sales only)**

*CHILDREN AND YOUNG PERSONS*

6(a)	When alcohol is being sold for consumption on the premises will children or young persons be allowed entry	YES
	*Delete as appropriate	

6(b) Where the answer to 6(a) is YES provide statement of the **TERMS** under which they will be allowed entry

Children and young persons will only be allowed access if consuming a meal.

6(c) Provide statement regarding the **AGES** of children or young persons to be allowed entry

0 to 17 years

6(d) Provide statement regarding the **TIMES** during which children and young persons will be allowed entry

11AM to 1AM

6(e) Provide statement regarding the **PARTS** of the premises to which children and young persons will be allowed entry

All parts of the premises to which the public have access.

**Question 7**

**CAPACITY OF PREMISES**

*What is the proposed capacity of the premises to which this application relates?*

160

**Question 8**

**PREMISES MANAGER** (NOTE: not required where application is for grant of provisional premises licence)

*Personal details*

8(a) *Name*

Carol Ann Lawrie

8(b) *Date of birth*

17 April 1962

8(c) *Contact address*

175/3 Gorgie Road  
Edinburgh  
EH11 1TJ

8(d) *Email address*

8(e) *Personal licence*

<i>Date of issue</i>	<i>Name of Licensing Board issuing</i>	<i>Reference no. of personal licence</i>
09 April 2014	City of Edinburgh Licensing Board	14/02861

**DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT**

**If signing on behalf of the applicant please state in what capacity.**

The contents of this operating plan are true to the best of my knowledge and belief.

Signature .....  ..... \* (see note below)

Date 12/05/2016 .....

Capacity ..... ~~APPLICANT~~/AGENT (delete as appropriate).

Telephone number and email address of signatory .....

**\* Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

Stephen J. McGowan  
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18 MAY 2016